

Army Regulation 27-10

Legal Services

Military Justice

**Headquarters
Department of the Army
Washington, DC
8 August 1994**

UNCLASSIFIED

JA 130
Nonjudicial Punishment
Reference Materials

Army Regulation 27-10, Chapter 3 (with changes) .
Part V, Manual for Courts-Martial.

SUMMARY of CHANGE

AR 27-10
Military Justice

This revision--

- o Changes the procedures for obtaining grants of immunity for persons not subject to the Uniform Code of Military Justice from the Attorney General, transferring the DA Staff responsibility for such requests from the Litigation Division to the Criminal Law Division (para 2-4).
- o Establishes the standard of proof for nonjudicial punishment as beyond a reasonable doubt (para 3-18).
- o Clarifies the amenability of retired pay to forfeitures imposed by nonjudicial punishment (para 3-19).
- o Adds new provisions for transfer of convening authority action (para 5-29).
- o Sets forth procedures for petitions for new trial under Article 73, UCMJ (para 5-30).
- o Establishes readability criteria for records of trial (para 5-38).
- o Provides for review by military judges of military magistrate decisions to disapprove pretrial confinement (para 9-5).
- o Makes changes in the administration of the Army Victim/Witness Assistance Program (chap 18).
- o Clarifies procedures for calculating forfeitures of pay for Reserve Component soldiers receiving nonjudicial punishment (para 21-9).
- o Adds a new chapter on Prosecution of Criminal Offenses in Federal Courts (chap 23).

Effective 8 September 1994

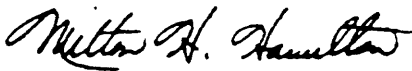
Legal Services

Military Justice

By Order of the Secretary of the Army:

GORDON R. SULLIVAN
General, United States Army
Chief of Staff

Official:



MILTON H. HAMILTON
Administrative Assistant to the
Secretary of the Army

History. This issue publishes a revision of this publication. Because the publication has been revised extensively, the changed portions have not been highlighted.

Summary. This regulation implements, in part, the Department of Defense Reorganization Act, changes to the Manual for Courts-Martial, 1984, and includes changes on matters of policy and procedure pertaining to the administration of military justice within the Army.

Applicability. This regulation applies to the Active Army, and the Army National Guard

and the U.S. Army Reserve when either is on active duty or inactive duty training and in a duty status under title 10, United States Code. This regulation is applicable during full mobilization.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The Judge Advocate General has the authority to approve exceptions to this regulation which are consistent with controlling law and regulation. The Judge Advocate General may delegate this authority in writing to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

Internal control systems. This regulation is subject to the requirements of AR 11-2. It contains internal control provisions, but does not contain checklists for conducting internal reviews. These checklists are contained in DA Circular 11-series.

Supplementation. Supplementation of this regulation and establishment of command

and local forms are prohibited without prior approval from HQDA (DAJA-CL), WASH DC 20310-2200.

Interim changes. Interim changes are not official unless authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA-CL), WASH DC 20310-2200.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 1209-E, block number 2038, intended for command levels C and D for Active Army, Army National Guard, and U.S. Army Reserve.

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b. The Department of Defense will provide assistance to the Department of Justice in matters not relating to the Department of Defense as permitted by law and implementing regulations.

6. Joint Investigations.

a. To the extent authorized by law, the Department of Justice investigative agencies and the Department of Defense investigative agencies may agree to enter into joint investigative endeavors, including undercover operations, in appropriate circumstances. However, all such investigations will be subject to Department of Justice guidelines.

b. The Department of Defense, in the conduct of any investigation that might lead to prosecution in Federal District Court, will conduct the investigation consistent with any Department of Justice guidelines. The Department of Justice shall provide copies of all relevant guidelines and their revisions.

DOD Supplemental Guidance

When DoD procedures concerning apprehension, search and seizure, interrogation, eyewitnesses, or identification differ from those of DoJ, DOD procedures will be used, unless the DoJ prosecutor has directed that DoJ procedures be used instead. DOD criminal investigators should bring to the attention of the DoJ prosecutor, as appropriate, situations when use of DoJ procedures might impede or preclude prosecution under the UCMJ (reference(d)).

7. Apprehension of Suspects. To the extent authorized by law, the Department of Justice and the Department of Defense will each promptly deliver or make available to the other suspects, accused individuals and witnesses where authority to investigate the crimes involved is lodged in the other Department. This MOU neither expands nor limits the authority of either Department to perform apprehensions, searches, seizures, or custodial interrogations.

G. Exception

This Memorandum shall not affect the investigative authority now fixed by the 1979 "Agreement Governing the Conduct of the Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation" and the 1983 Memorandum of Understanding between the Department of Defense, the Department of Justice and the FBI concerning "Use of Federal Military Force in Domestic Terrorist Incidents."

**Chapter 3
Nonjudicial Punishment**

**Section I
Applicable Policies (para 1, Part V, MCM)**

3-1. General

This chapter implements and amplifies Article 15, UCMJ, and Part V, MCM. No action should be taken under the authority of Article 15, UCMJ, without referring to the appropriate provisions of the MCM and this chapter. This chapter prescribes requirements, policies, limitations, and procedures for—

- a. Commanders at all levels imposing nonjudicial punishment.
- b. Members on whom this punishment is to be imposed.
- c. Other persons who may take some action with respect to the proceedings.

3-2. Use of nonjudicial punishment

A commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial punishment (para 1d(1), Part V, MCM). Use of nonjudicial punishment is proper in all cases involving minor offenses in which

nonpunitive measures are considered inadequate or inappropriate. If it is clear that nonjudicial punishment will not be sufficient to meet the ends of justice, more stringent measures must be taken. Prompt action is essential for nonjudicial punishment to have the proper corrective effect. Nonjudicial punishment may be imposed to—

- a. Correct, educate, and reform offenders who the imposing commander determines cannot benefit from less stringent measures.
- b. Preserve a soldier's record of service from unnecessary stigma by record of court-martial conviction.
- c. Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

3-3. Relationship of nonjudicial punishment to nonpunitive measures (para 1g, Part V, MCM)

a. *General.* Nonjudicial punishment is imposed to correct misconduct in violation of the UCMJ. Such conduct may result from intentional disregard of or failure to comply with prescribed standards of military conduct. 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. These measures are primarily tools for teaching proper standards of conduct and performance and do not constitute punishment. Included among nonpunitive measures are: denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training (AR 600-20), bar to reenlistment, and MOS reclassification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons. This authority exists apart from any authority to punish misconduct under Article 15. These two separate and distinct kinds of authority should not be confused (AR 600-200).

b. *Reprimands and admonitions.*

(1) Commanding officers have authority to give admonitions or reprimands either as an administrative measure or as nonjudicial punishment. If imposed as a punitive measure under Article 15, the procedure set forth in paragraph 4, Part V, MCM, and in section III of this chapter must be followed.

(2) A written administrative admonition or reprimand will contain a statement that it has been imposed as an administrative measure and not as punishment under Article 15 (AR 600-37). Admonitions and reprimands imposed as punishment under Article 15, whether administered orally or in writing (para 5c(1), Part V, MCM), should state clearly that they were imposed as punishment under that Article.

c. *Extra training or instruction.* One of the most effective nonpunitive measures available to a commander is extra training or instruction (AR 600-20). It is used when a soldier's duty performance has been substandard or deficient; for example, a soldier who fails to maintain proper attire may be required to attend classes on the wearing of the uniform and stand inspection until the deficiency is corrected. The training or instruction must relate directly to the deficiency observed and must be oriented to correct that particular deficiency. Extra training or instruction may be conducted after duty hours.

3-4. Personal exercise of discretion (para 1d(2), Part V, MCM)

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.
- (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.
- (3) Determining the amount and nature of any punishment, if punishment is appropriate.

b. No superior may direct that a subordinate authority impose punishment under Article 15 or issue regulations, orders, or so-

called "guides" that either directly or indirectly suggest to subordinate commanders that—

(1) Certain categories of offenders or offenses should be disposed of by punishment under Article 15.

(2) Predetermined kinds or amounts of punishment should be imposed for certain categories of offenders or offenses.

c. A superior commander may send or return a case to a subordinate for appropriate disposition if necessary and within the jurisdiction of the subordinate. A superior commander may also reserve personally, or to the superior commander's delegate, the right to exercise Article 15 authority over a particular case or over certain categories of offenders or offenses (para 3-7c).

3-5. Reference to superior

a. See R.C.M. 306(b). Nonjudicial punishment should be administered at the lowest level of command commensurate with the needs of discipline, after thoroughly considering—

(1) The nature and circumstances of the offense.

(2) The age, previous record, maturity, and experience of the offender.

b. If a commander determines that the commander's authority under Article 15 is insufficient to impose a proper punishment, the case may be referred to an appropriate superior. The same procedure will be followed if the authority of the commander to exercise Article 15 powers has been withheld or limited (paras 3-4 and 3-7c). In transmitting a case for action by a superior, no recommendation of the nature or extent of the punishment to be imposed will be made. Transmittal should normally be accomplished by written correspondence using DA Form 5109-R (Request to Superior to Exercise Article 15, UCMJ, Jurisdiction). DA Form 5109-R will be locally reproduced on 8½- by 11-inch paper. A copy for reproduction is located at the back of this regulation.

3-6. Filing determination

a. 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. In making a filing determination, the imposing commander must weigh carefully the interests of the soldier's career against those of the Army to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the soldier's age, grade, total service (with particular attention to the soldier's recent performance and past misconduct), and the fact that the filing decision is final, except for those cases where the soldier has more than one record of nonjudicial punishment directed for filing in the restricted fiche (see *b* below). However, the interests of the Army are compelling when the record of nonjudicial punishment reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the performance fiche.

b. 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 (Record of Proceedings under Article 15, UCMJ), 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. The filing should be recorded on the present DA Form 2627 in block 11. The soldier concerned and the imposing commander will be informed of the filing of the DA Form 2627 in the performance fiche. The copy of the DA Form 2627 that was placed in the unit files will be moved to the soldier's MPRJ.

Section II

Authority (para 2, Part V, MCM)

3-7. Who may impose nonjudicial punishment

a. *Commanders.* Unless otherwise specified in this regulation or if authority to impose nonjudicial punishment has been limited or withheld by a superior commander (see *c* below), any commander is authorized to exercise the disciplinary powers conferred by Article 15.

(1) The term "commander," as used in this chapter, means a commissioned or warrant officer who, by virtue of that officer's grade and assignment, exercises primary command authority over a military organization or prescribed territorial area, that under pertinent official directives is recognized as a command.

(2) The term imposing commander refers to the commander or other officer who actually imposes the nonjudicial punishment.

(3) Commands include the following:

(a) Companies, troops, and batteries.

(b) Numbered units and detachments.

(c) Missions.

(d) Army elements of unified commands and joint task forces.

(e) Service schools.

(f) Area commands.

(4) Commands also include, in general, any other organization of the kind mentioned in (1) above (for example, a provisional unit designated under AR 220-5), the commander of which is the one looked to by superior authority as the individual chiefly responsible for maintaining discipline in that organization. Thus, an infantry company, whether or not separate or detached (R.C.M. 504(b)(2)), is considered to be a command. However, an infantry platoon that is part of a company and is not separate or detached is not considered to be a command. Although a commissioned or warrant officer exercising command is usually designated as the commander, this position may be designated by various other titles having the same official connotation; for example, commandant, chief of mission, or superintendent. Whether an officer is a commander is determined by the duties he or she performs, not necessarily by the title of the position occupied.

b. *Delegation.* The authority given to a commander under Article 15 is an attribute of command and, except as provided in this paragraph, may not be delegated. Pursuant to the authority vested in the Secretary the Army under the provisions of Article 15(a), UCMJ, the following rules with respect to delegation of powers are announced:

(1) Any commander authorized to exercise GCM jurisdiction or any commanding general may delegate that commander's or commanding general's powers under Article 15 to one commissioned officer actually exercising the function of deputy or assistant commander. A commander may, in lieu of delegating powers under Article 15 to a deputy or assistant commander, delegate such powers to the chief of staff of the command, provided the chief of staff is a general officer.

(2) Authority delegated under b(1) above may be exercised only when the delegate is senior in grade to the person punished. A delegate need not, when acting as a superior authority on an appeal, be senior in grade to the imposing commander.

(3) Delegations of authority to exercise Article 15 powers will be made in writing; for example, a memorandum. It will designate the officer on whom the powers are conferred by name and position. Unless limited by the terms of such delegation or by (2) above, an officer to whom this authority is granted may exercise any power that is possessed by the officer who delegated the authority. Unless otherwise specified in the written authorization, a delegation of Article 15 authority shall remain effective until—

(a) The officer who delegated the officer's powers ceases to occupy that position, other than because of temporary absence;

(b) The officer to whom these powers have been delegated ceases to occupy the position wherein the officer was delegated such powers, other than because of temporary absence; or

(c) Notification that the delegation has been terminated is made in writing. A delegation does not divest the delegating officer of the

right to personally exercise the delegating officer's Article 15 powers in any case in which the delegating officer desires to act. Although an appeal from punishment imposed under a delegation of Article 15 powers will be acted on by the authority next superior to the delegating officer (para 3-30), the latter may take the action described in paragraph 3-32. (See paras 6 and 7, Part V, MCM, and para 3-38 of this regulation.)

c. Limitation of exercise of disciplinary authority by subordinates. Any commander having authority under Article 15, UCMJ, may limit or withhold the exercise of such authority by subordinate commanders. For example, the powers of subordinate commanders to exercise Article 15 authority over certain categories of military personnel, offenses, or individual cases may be reserved by a superior commander. A superior authority may limit or withhold any power that a subordinate might otherwise have under this paragraph.

3-8. Persons on whom nonjudicial punishment may be imposed

a. Military personnel of a commander's command. Unless such authority is limited or withheld by superior competent authority, a commander may impose punishment under Article 15 on commissioned officers, warrant officers, and other military personnel of a commander's command, except cadets of the U.S. Military Academy.

(1) For the purpose of Article 15, military personnel are considered to be "of the command" of a commander if they are—

(a) Assigned to an organization commanded by that commander.

(b) Affiliated with the command (by attachment, detail, or otherwise) under conditions, either expressed or implied, that indicate that the commander of the unit to which affiliated and the commander of the unit to which they are assigned are to exercise administrative or disciplinary authority over them.

(2) Under similar circumstances, a commander may be assigned territorial command responsibility so that all or certain military personnel in the area will be considered to be of the command for the purpose of Article 15

(3) To determine if an individual is "of the command" of a particular commanding officer, refer first to those written or oral orders or directives that affect the status of the individual. If orders or directives do not expressly confer authority to administer nonjudicial punishment to the commander of the unit with which the soldier is affiliated or present (as when, for example, they contain no provision attaching the soldier "for disciplinary purposes"), consider all attendant circumstances, such as—

(a) The phraseology used in the orders.

(b) Where the soldier slept, ate, was paid, performed duty, the duration of the status, and other similar factors.

(4) If orders or directives include such terms as "attached for administration of military justice," or simply "attached for administration," the individual so attached will be considered to be of the command of the commander of the unit of attachment for the purpose of Article 15.

b. Termination of status. Nonjudicial punishment will not be imposed on an individual by a commander after the individual ceases to be of the commander's command, because of transfer or otherwise. However, if Article 15 proceedings have been instituted and punishment has not been imposed prior to the time of the change of assignment, the commander who instituted the proceedings may forward the record of proceedings to the gaining commander for appropriate disposition.

c. Personnel of other armed forces. Except when commanding a unified command, specified command, joint command, joint task force, or subordinate commands thereof (under conditions prescribed by applicable law, executive order, or superior authority), or when authorized by the Secretary of Defense, Army officers will not impose nonjudicial punishment on a member of another armed force.

3-9. Minor offenses

Generally, the term "minor" includes misconduct not involving any greater degree of criminality than is involved in the average offense tried by SCM. It does not include misconduct of a type that, if tried by GCM, could be punished by dishonorable discharge or confinement for more than 1 year (see para 1e, Part V, MCM). This is not a hard and fast rule; the circumstances of the offense might indicate that action under Article 15 would be appropriate even in a case falling outside these categories. Violations of, or failures to obey general orders or regulations may be minor offenses if the prohibited conduct itself is of a minor nature even though also prohibited by a general order or regulation.

3-10. Double punishment prohibited

Several minor offenses arising out of substantially the same transaction or misconduct will not be made the basis of separate actions under Article 15, UCMJ. When punishment has been imposed under Articles 13 or 15, punishment may not again be imposed for the same misconduct under Article 15.

3-11. Restriction on punishment after exercise of jurisdiction by civilian authorities

3-12. Statute of limitations

See UCMJ, Article 43(c), and paragraph 1f(4), Part V, MCM, regarding the statute of limitations applicable to nonjudicial punishment.

Section III Procedure (para 4, Part V, MCM)

3-13. General

The authority to impose nonjudicial punishment charges a commander with the responsibility of exercising the commander's authority in an absolutely fair and judicious manner. (See also para 1d, Part V, MCM.)

3-14. Preliminary inquiry

a. The commander of the alleged offender must ensure that the matter is investigated promptly and adequately. The investigation should provide the commander with sufficient information to make an appropriate disposition of the incident. The investigation should cover—

(1) Whether an offense was committed.

(2) Whether the soldier was involved.

(3) The character and military record of the soldier.

b. Usually the preliminary investigation is informal and consists of interviews with witnesses and/or review of police or other informative reports. If, after the preliminary inquiry, the commander determines, based on the evidence currently available, that the soldier probably has committed an offense and that a nonjudicial punishment procedure is appropriate, the commander should (unless the case is to be referred to a superior commander (para 3-5)) take action as set forth in this section.

3-15. Commander's guide for notification and imposition

In all cases, other than summarized proceedings, commanders should use appendix B of this regulation as a guide in conducting the proceedings.

3-16. Summarized proceedings

a. Preliminary inquiry.

(1) A commander, after a preliminary inquiry into an alleged offense by an enlisted soldier may use summarized proceedings if it is determined that should punishment be found to be appropriate, it should not exceed—

(a) Extra duties for 14 days.

(b) Restriction for 14 days.

(c) Oral reprimand or admonition.

(d) Any combination of the above.

(2) DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, UCMJ) will be used to record the proceedings. An illustrated example of a completed DA Form 2627-1 is shown at figure 3-1. The rules and limitations concerning punishments in section IV and provisions regarding clemency in section V are applicable.

b. *Notification and explanation of rights.* If an imposing commander determines that summarized proceedings are appropriate, the designated subordinate officer or noncommissioned officer (NCO) (para 3-18), or the commander personally, will notify the soldier of the following:

(1) The imposing commander's intent to initiate proceedings under Article 15, UCMJ.

(2) The fact that the imposing commander intends to use summarized proceedings and the maximum punishments imposable under these proceedings.

(3) The right to remain silent.

(4) Offenses that the soldier allegedly has committed and the Article(s) of the UCMJ violated.

(5) The right to demand trial (see para 4a(5), Part V, MCM).

(6) The right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation.

(7) The right to appeal.

c. *Decision period.* The soldier will be given the opportunity to—

(1) Accept the Article 15.

(2) Request a reasonable time, normally 24 hours, to decide whether to demand trial by court-martial and to gather matters in defense, extenuation, and/or mitigation. Because of the limited nature of the possible punishment, the soldier has no right to consult with legally qualified counsel.

d. *Hearing.* Unless the soldier demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing (see para 3-18g(1)). The hearing will consist of the following:

(1) Consideration of evidence, written or oral, against the soldier.

(2) Examination of available evidence by the soldier.

(3) Presentation by the soldier of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.

(4) Determination of guilt or innocence by the imposing commander.

(5) Imposition of punishment or termination of the proceedings.

(6) Explanation of right to appeal.

e. *Appeal.* The appeal and the decision on appeal will be recorded in block 5, DA Form 2627-1. This will be done according to the procedures set forth in paragraph 3-32. The soldier will be given a reasonable time (normally no more than 5 calendar days) within which to submit an appeal (see para 3-29). The soldier may, pending submission and decision on the appeal, be required to undergo the punishment imposed, but once submitted, such appeal will be promptly decided. If the appeal is not decided within 3 calendar days, excluding the day of submission, and if the soldier so requests, further performance of any punishments involving deprivation of liberty will be delayed pending the decision on the appeal (see sec IV).

f. *Recording and filing of DA Form 2627-1.* The proceedings will be legibly summarized on DA Form 2627-1, ordinarily with handwritten entries. These forms will be maintained locally in nonjudicial punishment files (file number 27-10f). They will be destroyed at the end of 2 years from the date of imposition of punishment or on the soldier's transfer from the unit, whichever occurs first. A copy will be provided to the soldier pursuant to a request submitted during the filing period.

3-17. Formal proceedings (para 4, Part V, MCM)

A commander who, after a preliminary inquiry, determines—

a. That the soldier alleged to have committed an offense is an officer, or

b. That punishment, if it should prove to be appropriate, might exceed extra duties for 14 days, restriction for 14 days, oral reprimand on admonition, or any combination thereof, will proceed as set forth below. All entries will be recorded on DA Form 2627 (Record of Proceedings under Article 15, UCMJ). An illustrated example of a completed DA Form 2627 is shown at figure 3-2.

3-18. Notification and explanation of rights

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, UCMJ. The soldier will also be notified of the maximum punishment which the commander could impose under Article 15, UCMJ. The soldier will be provided a copy of DA Form 2627 with items 1 and 2 completed, including the date and signature of the imposing commander. The imposing commander may authorize a commissioned officer, warrant officer, or NCO (SFC or above), provided such person is senior to the soldier being notified, to deliver the DA Form 2627 and inform the soldier of the soldier's rights. The NCO performing the notification should ordinarily be the unit first sergeant or the senior NCO of the command concerned. In such cases, the notifier should follow appendix B as modified. The soldier should be provided with a copy of DA Form 2627 and supporting documents and statements, for use during the proceedings. The soldier will return the copy to the commander for annotation. It will be given to the soldier for retention when all proceedings are completed.

b. *Right to remain silent.* The soldier will be informed that—

(1) The soldier is not required to make any statement regarding the offense or offenses of which the soldier is suspected, and

(2) Any statement made 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. For the purpose of this chapter, counsel means the following: A judge advocate (JA), a DA civilian attorney, or an officer who is a member of the bar of a Federal court or of the highest court of a State, provided that counsel within the last two categories are acting under the supervision of either USA TDS or a staff or command judge advocate.

d. *Right to demand trial.* Soldiers attached to or embarked in a vessel may not demand trial by court-martial in lieu of nonjudicial punishment. Any other soldier will be advised that the soldier has a right to demand trial. 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 SCM, SPCM, or GCM. The soldier will also be told that the soldier may object to trial by summary court-martial (SCM) and that at special court-martial (SPCM) or general court-martial (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, except in rare circumstances, of the imposing commander (para 3-18g).

(2) Call witnesses. (See para 4c(1)(F), Part V, MCM).

(3) Present evidence.

(4) Request that the soldier be accompanied by a spokesperson.

(5) Request an open hearing (para 3-18g).

(6) Examine available evidence.

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. The decision period will not begin until the soldier has received actual notice and explanation of rights under Article 15 and has been provided a copy of DA Form 2627 with items 1 and 2 completed (see para 3-18a). The soldier will be advised that if the soldier demands a trial, block 3a of DA Form 2627 must be initialed and item 3 must be signed and dated within the decision period; otherwise, the commander will proceed under Article 15. The decision period should be determined after considering factors such as the complexity of the case and the availability of counsel. Normally, 48 hours is

a reasonable decision period. If the soldier does not request a delay, the commander may continue with the proceedings immediately. If the soldier requests a delay, the soldier may, but only for good reason, be allowed an additional period to be determined by the imposing commander to decide whether to demand trial. If a new imposing commander takes command after a soldier has been notified of the original imposing commander's intent to impose punishment, the soldier will be notified of the change. The soldier shall again be given a reasonable decision period in which to consult with counsel. In either case, item 11, DA Form 2627, will contain the following: "Para 3-18f(1), AR 27-10 complied with."

(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 demands trial by court-martial on any offense, no further action will be taken to impose nonjudicial punishment for that offense unless the soldier's demand is voluntarily withdrawn. Whether court-martial charges will be preferred against the soldier for the remaining offense(s) and the level of court-martial selected will be resolved by the appropriate commander. A soldier's demand for trial by court-martial will not bar disposition of minor offenses by nonpunitive measures by the appropriate commander.

(4) If the soldier does not demand trial by court-martial prior to expiration of the decision period, including any extension of time, 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. In such instances, the soldier will be informed that failure to complete and sign item 3 may be treated as a voluntary withdrawal of any oral demand for trial. If the soldier persists in the soldier's refusal and punishment is imposed, in addition to recording the punishment, the following entry will be made in item 4, DA Form 2627: "Advised of (his) (her) rights, the soldier (did not demand trial during the decision period) (refused to (complete) (sign) item 3)."

g. Hearing.

(1) In the presence of the commander. The soldier will be allowed to personally present matters in defense, extenuation, or mitigation in the presence of the imposing commander, except when appearance is prevented by the unavailability of the commander or by extraordinary circumstances (for example, the soldier is stationed at a geographic location remote from that of the imposing commander and cannot be readily brought before the commander). When personal appearance is requested, but is not granted, the imposing commander will appoint a commissioned officer to conduct the hearing and make a written summary and recommendations. The soldier shall be entitled to appear before the officer designated to conduct the hearing. (See para 4c(1), Part V, MCM.)

(2) Open hearing. Article 15 proceedings are not adversary in nature. Ordinarily, hearings are open. However, a soldier may request an open or closed hearing. In all cases, the imposing commander will, after considering all the facts and circumstances, determine whether the hearing will be open or closed. (See para 4c(1)(G), Part V, MCM.) An open hearing is a hearing open to the public but does not require the commander to hold the proceeding in a location different from that in which the commander conducts normal business; that is, the commander's office.

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. No travel fees nor any other costs may be incurred at Government expense for the presence of the spokesperson. The spokesperson's presence is voluntary. Because the proceedings are not adversary in

nature, 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 in defense, extenuation, or mitigation shall be restricted to those witnesses reasonably available as determined by the imposing commander. To determine whether a witness is reasonably available, the imposing commander will consider the fact that neither witness nor transportation fees are authorized. Reasonably available witnesses will ordinarily include only personnel at the installation concerned and others whose attendance will not unnecessarily delay the proceedings.

j. Evidence. The imposing commander is not bound by the formal rules of evidence before courts-martial and 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). If the imposing commander decides to impose punishment, ordinarily the commander will announce the punishment to the soldier. The commander may, if the commander desires to do so, explain to the soldier why a particular punishment was imposed.

m. Right to appeal. The appellate rights and procedures, which are available to the soldier, will be explained.

Section IV

Punishment (para 5, Part V, MCM)

3-19. Rules and limitations

a. Whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. However, commanders are encouraged to consult with their NCOs on the appropriate type, duration, and limits of punishment to be imposed. Additionally, as NCOs are often in the best position to observe a soldier undergoing punishment and evaluate daily performance and attitude, their views on clemency should be given careful consideration.

b. Pursuant to the authority of the Secretary as set forth in paragraph 5a, Part V, MCM, the following additional rules and limitations concerning the kinds and amounts of punishment authorized under Article 15, UCM (see also table 3-1):

(1) *Correctional custody.* Correctional custody may be imposed by any commander unless the authority to impose has been withheld or limited by a superior authority. The responsibilities, policies, and procedures concerning the operation of correctional custody facilities are contained in AR 190-34. Soldiers in grades PFC or above may not be placed in correctional custody. However, if an unsuspended reduction to the grade of PFC or below is imposed under an Article 15, correctional custody may also be imposed. Time spent in correctional custody does not constitute lost time (10 USC 972). Before imposing correctional custody the commander will ensure that adequate facilities, as described in AR 190-34, exist to carry out the punishment.

(2) *Confinement on bread and water or diminished rations.* This punishment may be imposed only on a soldier in the grade of PFC or below who is attached to or embarked on a vessel.

(3) *Restriction.* Restriction may be imposed with or without suspension from duties. Normally, the limits of the restriction should be announced at the time punishment is imposed. However, the imposing commander, a successor-in-command, and any superior authority may change the specified limits of restriction; for example, if a soldier is transferred or assigned duties at another location after

imposition and before the term of restriction is completed. The limits of restriction, as changed, will be generally no more restrictive (unless required by military exigencies) than the limits originally imposed.

(4) *Arrest in quarters.* A commissioned or warrant officer undergoing this punishment may be required to perform any military duty not involving the exercise of command. During field exercises, an officer's quarters are those normally occupied by officers of a similar grade and duty position. If a commissioned or warrant officer in arrest in quarters is placed on duty involving the exercise of command by an authority having knowledge of the status of arrest in quarters, that status is thereby terminated.

(5) *Extra duties.* Extra duties may be required to be performed at anytime and, within the duration of the punishment, for any length of time. Extra duties may include the performance of fatigue duty or of any other military duty. 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, or

(e) Would demean the soldier's position as a NCO or specialist (AR 600-20).

(6) *Reduction in grade.*

(a) *Promotion authority.* The grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of Article 15(b) if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade (AR 600-200).

(b) *Lateral appointment or reduction of NCO to specialist and a specialist to NCO.* (Rescinded.)

(c) *Date of rank.* When a person is reduced in grade as a result of an unsuspended reduction, the date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If the reduction is suspended either on or after the time the punishment was imposed, or is set aside or mitigated to forfeiture, the date of rank in the grade held before the punishment was imposed remains unchanged. If a suspension of the reduction is vacated, the date of rank in the grade to which reduced as a result of the action is the date the punishment was originally imposed, regardless of the date the punishment was suspended or vacated.

(d) *Entitlement to pay.* When a soldier is restored to a higher pay grade because of a suspension or when a reduction is mitigated to a forfeiture, entitlement to pay at the higher grade is effective on the date of the suspension or mitigation. This is true even though an earlier date of rank is assigned. If, however, a reduction is set aside and all rights, privileges, and property are restored, the soldier concerned will be entitled to pay as though the reduction had never been imposed.

(e) *Void reduction.* Any portion of a reduction under Article 15 beyond the imposing commander's authority to reduce is void and must be set aside. Where, a commander reduces a soldier below a grade to which the commander is authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the soldier at least one grade, a one-grade reduction may be approved. Also, if a reduction is to a lower specialist grade when reduction should have been to a lower NCO grade (or vice versa), administrative action will be taken to place the offender in the proper rank for the MOS held in the reduced pay grade. All rights, privileges, and property, including pay and allowances, of which a soldier was deprived by a reduction that has been set aside must be restored.

(f) *Removal from standing promotion lists.* (See AR 600-200.)

(7) *Forfeiture of pay.*

(a) *Limitations.* Forfeitures imposed by a company grade commander may not be applied for more than 1 month, while those imposed by a field grade commander may not be applied for more than 2 months; for example, a company grade commander may impose a forfeiture of 7 days pay for 1 month but may not impose a forfeiture of 3 days pay per month for 2 months (table 3-1). If a forfeiture of pay has been imposed in addition to a suspended or unsuspended reduction in grade, the amount forfeited will be limited to the amount authorized for the reduced grade. The maximum forfeiture of pay to which a soldier is subject during a given month, because of one or more actions under Article 15, is one-half of the soldier's pay per month. Article 15 forfeitures shall not (in conjunction with partial forfeitures adjudged by court-martial) deprive a soldier of more than two-thirds of the soldier's pay per month. (See DOD Military Pay and Allowances Entitlements Manual.)

(b) *Retired soldiers.* Forfeitures imposed under Article 15 may be applied against a soldier's retirement pay.

(8) *Combination and apportionment.* With the following exception, punishment authorized under Article 15(b) may be combined: No two or more punishments involving deprivation of liberty may be combined, in the same nonjudicial punishment proceedings, to run either consecutively or concurrently. Two or more punishments involving deprivation of liberty may not be combined, in the same nonjudicial punishment proceeding, to run either consecutively or concurrently, except that restriction and extra duty may be combined in any manner to run for a period not in excess of the maximum duration imposable for extra duty by the imposing commander. 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 as prescribed in paragraph 3-21b. (See para 3-21c regarding the circumstances when deprivation of liberty punishments, imposed in separate nonjudicial punishment proceedings may run consecutively.)

(9) *Format for punishments.* The formats shown below should be used when entering punishments in item 4, DA Form 2627. When more than one punishment is imposed during any single Article 15 proceeding, punishments should be listed in the following order, as appropriate: reduction, forfeiture of pay, deprivation of liberty, admonition/reprimand.

(a) *Reduction.* Reduction should be entered on DA Form 2627 as follows: Reduction to (grade) (pay grade). Example: "Reduction to Specialist (E4)."

(b) *Forfeitures.* Forfeiture of pay should be entered on DA Form 2627 per the following examples (para 5c(8), Part V, MCM): Example A. When the forfeiture is to be applied for not more than 1 month: "Forfeiture of \$. . ." Example B. When the forfeiture is to be applied for more than 1 month: "Forfeiture of \$. . . per month for . . . months."

(c) *Deprivation of liberty.* Specific duties to be performed during extra duty are not normally specified on either DA Form 2627 or DA Form 2627-1. Limits on restriction may be listed on either DA Form 2627 or DA Form 2627-1 but are not required. Example 1: "Extra duty for . . . days, restriction for . . . days." Example 2: "Extra duty for . . . days, restriction to the limits of . . . for . . . days."

(d) *Admonition and Reprimand.* Admonitions or reprimands imposed on commissioned or warrant officers must be in writing (para 5(c)(1), Part V MCM). Admonitions or reprimands imposed on enlisted soldiers under formal proceedings may be administered orally or in writing. Written admonitions and reprimands imposed as a punitive measure under Article 15, UCMJ, will be in memorandum format, per AR 25-50, and will be listed as an attachment in item 11, DA Form 2627. Oral admonitions and reprimands will be identified as such in either item 4, DA Form 2627, or item 2, DA Form 2627-1.

3-20. Effect on appointable status

See AR 600-200 and AR 600-8-2.

3-21. Effective date and execution of punishments

a. *General.* The date of imposition of nonjudicial punishment is the date items 4 through 6, DA Form 2627, or items 1 through 3, DA Form 2627-1, as appropriate, are signed by the imposing commander. This action normally will be accomplished on the day punishment is imposed.

b. *Unsuspending punishments.* Unsuspending punishments of reduction and forfeiture of pay take effect on the date imposed. Other unsuspending 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. Except as provided in paragraph 3-21c, the delay in execution of punishment should not exceed 30 days. Once the soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 5 calendar days (3 days for summarized proceedings), excluding the submission date. If the appeal is not decided within this period, and if the soldier so requests, the performance of those punishments involving deprivation of liberty will be interrupted pending decision on the appeal.

c. *Additional punishment.* If a soldier to be punished is currently undergoing punishment or deprivation of liberty under a prior Article 15 or court-martial, an imposing commander may prescribe additional punishment involving deprivation of liberty after completion of the earlier punishment.

d. *Vacated suspended reduction.* A suspended reduction, later vacated, is effective on the date the vacation is directed. (See para 3-19b(6)(c) for determination of date of rank.)

e. *Execution of punishment.* Any commanding officer of the person to be punished may, subject to paragraph 3-19 and any other limitations imposed by a superior authority, order the punishment to be executed in such a manner and under such supervision as the commander may direct.

3-22. 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. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other soldiers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishments that might result in the appearance of vindictiveness or favoritism. In deciding whether to announce punishment of soldiers in the grade of SGT or above, the following should be considered:

- a. The nature of the offense.
- b. The individual's military record and duty position.
- c. The deterrent effect.
- d. The impact on unit morale or mission.
- e. The impact on the victim.
- f. The impact on the leadership effectiveness of the individual concerned.

Section V

Suspension, Vacation, Mitigation, Remission, and Setting Aside (para 6, Part V, MCM)

3-23. Clemency

a. *General.* The imposing commander, a successor-in-command, or the next superior authority may, in accordance with the time prescribed in the MCM—

- (1) Remit or mitigate any part or amount of the unexecuted portion of the punishment imposed.
- (2) Mitigate reduction in grade, whether executed or unexecuted, to forfeiture of pay.
- (3) At any time, suspend probationally any part or amount of the unexecuted portion of the punishment imposed.

(4) Suspend probationally a reduction in grade or forfeiture, whether or not executed. An uncollected forfeiture of pay shall be considered unexecuted.

b. *Meaning of successor-in-command.* As used in paragraph 6a, Part V, MCM, a successor-in-command is the officer who has authority to impose the same kind and amount of punishment on a soldier concerned that was initially imposed or was the result of a modification and who—

(1) Commands the unit to which the punished soldier is currently assigned or attached (see para 3-8).

(2) Is the commander succeeding to the command occupied by the imposing commander, provided the soldier still is of that command, or

(3) Is the successor to the delegate who imposed the punishment, provided the same authority has been delegated under paragraph 3-7b to that successor and the soldier is still of that command.

c. *Recording of action.* Any action of suspension, mitigation, remission, or setting aside (para 3-28) taken by an authority will be recorded according to notes 11 and 12, DA Form 2627, notes 9 and 10, DA Form 2627-1, or DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ) (para 3-38b). An illustrated example of a completed DA Form 2627-2 is shown at figure 3-3.

3-24. Suspension

Ordinarily, punishment is suspended to grant a probational period during which a soldier may show that the soldier deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of 4 months after the date imposed. Suspension of punishment may not be for a period longer than 6 months from the suspension date. Further misconduct by the soldier, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment (para 3-25). Unless otherwise stated, an action suspending a punishment automatically includes a condition that the soldier not violate any punitive article of the UCMJ.

3-25. Vacation

a. A commander may vacate any suspended punishment, (para 6a (4), Part V, MCM), provided the punishment is of the type and amount the commander could impose and where the commander has determined that the soldier has committed misconduct (amounting to an offense under the UCMJ) during the suspension period. The commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the misconduct. 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. The death, discharge, or separation from service of the soldier punished prior to the expiration of the suspension automatically remits the suspended punishment. Misconduct resulting in vacation of a suspended punishment may also be the basis for the imposition of another Article 15.

b. Commanders will observe the following procedures in determining whether to vacate suspended punishments:

(1) If the suspended punishment is of the kind set forth in Article 15e(1) through (7), the soldier should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate the suspension to rebut the information on which the proposed vacation is based. If appearance is impracticable, the soldier should nevertheless ordinarily be given notice of the proposed vacation and the opportunity to respond.

(2) In cases involving punishments not set forth in Article 15e(1) through (7), the soldier will be informed of the basis of the proposed vacation and should be given an opportunity to respond, either orally or in writing.

(3) If the soldier is absent without leave at the time the commander proposes vacation, and remains so; the commander, after 14 days from the date the soldier departed AWOL or on the last day of

the suspension period, whichever is earlier, may, at the commander's discretion, vacate the suspension without providing notice or any opportunity to respond.

(4) The following will be recorded according to notes 11 and 12, DA Form 2627, notes 9 and 10, DA Form 2627-1, or DA Form 2627-2 (para 3-38b):

(a) Action vacating a suspension, to include the basis for vacation.

(b) Whether or not the soldier appeared or was otherwise provided an opportunity to respond.

(c) An explanation, if the soldier did not appear, in a case involving vacation of a suspended punishment listed in Article 15(e)(1) through (7), or in other cases, if the soldier was not provided an opportunity to respond.

(d) Failure to provide notification and an opportunity to appear or to otherwise respond to the basis of a proposed vacation may result in the record of punishment being inadmissible in a subsequent court-martial, but will not, by itself, render a vacation action void.

3-26. Mitigation

a. General

(1) Mitigation is a reduction in either the quantity or quality of a punishment; for example, a punishment of correctional custody for 20 days reduced to 10 days or to restriction for 20 days. The general nature of the punishment remains the same. The first action lessens the quantity and the second lessens the quality, with both mitigated punishments remaining of the same general nature as correctional custody; that is, deprivation of liberty. However, a mitigation of 10 days correctional custody to 14 days restriction would not be permitted because the quantity has been increased.

(2) A forfeiture of pay may be mitigated to a lesser forfeiture of pay. A reduction may be mitigated to forfeiture of pay (but see para 3-19b(7)(b)). When mitigating reduction to forfeiture of pay, the amount of the forfeiture imposed may not be greater than the amount that could have been imposed initially, based on the restored grade, by the officer who imposed the mitigated punishment.

b. Appropriateness. Mitigation is appropriate when—

(1) The recipient has, by the recipient's subsequent good conduct, merited a reduction in the severity of the punishment.

(2) The punishment imposed was disproportionate to the offense or the offender.

c. Limitation on mitigation.

(1) With the exception of reduction in grade, the power to mitigate exists only with respect to a punishment or portion thereof that is unexecuted. A reduction in grade may be mitigated to forfeiture of pay even though it has been executed. Except when mitigating a reduction in grade (one or more) to forfeiture of pay, a reduction of more than one grade may not be mitigated to an intermediate grade. When correctional custody or other punishments (in the nature of deprivation of liberty) are mitigated to lesser punishments of this kind, the lesser punishment may not run for a period greater than the remainder of the period for which the punishment mitigated was initially imposed. For example, when a person is given 15 days of correctional custody and has served 5 days of this punishment and it is decided to mitigate the correctional custody to extra duties or restriction, or both, the mitigated punishment may not exceed a period of 10 days.

(2) Although a suspended punishment may be mitigated to a punishment of a lesser quantity or quality (which is also suspended for a period not greater than the remainder of the period for which the punishment mitigated was suspended), it may not, unless the suspension is vacated, be mitigated to an unsuspended punishment. (See para 3-28 for the time period within which reduction ordinarily may be mitigated, if appropriate, to a forfeiture of pay.)

3-27. Remission

This is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted, but may be mitigated (see para 3-26) or set aside (see para 3-28). The death, discharge, or separation

from the service of the soldier punished remits any unexecuted punishment. A soldier punished under Article 15 will not be held beyond expiration of the soldier's term of service (ETS) to complete any unexecuted punishment.

3-28. Setting aside and restoration

a. This is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. Nonjudicial punishment is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error which clearly and affirmatively injured the substantial rights of the soldier. An example of "clear injustice" would be the discovery of new evidence unquestionably exculpating the soldier. "Clear injustice" does not include the fact that the soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the soldier.

b. Normally, the soldier's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

c. In cases where administrative error results in incorrect entries on DA Form 2627 or DA Form 2627-1 the appropriate remedy generally is an administrative correction of the form and not a setting aside of the punishment.

d. The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within 4 months after the punishment has been executed. When a commander sets aside any portion of the punishment, the commander will record the basis for this action according to notes 11 and 12, DA Form 2627; notes 9 and 10, DA Form 2627-1, or DA Form 2627-2 (para 3-38b). When a commander sets aside any portion of the punishment after 4 months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set aside action.

Section VI

Appeals (para 7, Part V, MCM)

3-29. General

a. Only one appeal is permissible under Article 15 proceedings. Provisions for other administrative relief measures are contained in paragraph 3-43. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than 5 calendar days after the punishment is imposed will be presumed to be untimely, unless the superior commander, in the superior commander's sound discretion for good cause shown, determines it to be timely.

b. 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. Although a suspended punishment may be appealed, no appeal is authorized from the vacation of a suspended punishment.

3-30. Who may act on an appeal

a. The authority next superior to the commanding officer who imposed the article 15 will act on an appeal if the soldier punished is still of the command of that officer at the time of appeal. If the commander has acted under a delegation of authority, the appeal will be acted on by the authority next superior to the delegating officer. If, at the time of appeal, the soldier is no longer of the imposing commander's command, the authority next superior to the soldier's present commanding officer (who can impose the same kind and amount of punishment as that imposed or resulting from subsequent modifications) will act on the appeal.

b. The authority "next superior" to an imposing commander is normally the next superior in the chain-of-command, or such other authority as may be designated by competent authority as being next superior for the purposes of Article 15. A superior authority who exercises GCM jurisdiction, or is a general officer in command, may delegate those powers the superior authority has as superior authority under Article 15(e), UCMJ, to a commissioned officer of the superior authority's command subject to the limitations in paragraph 3-7b. Regardless of the grade of the imposing commander, The Judge Advocate General is delegated the authority next superior for acting on appeals when no intermediate superior authority is reasonably available. Such appeals will be forwarded to HQDA (DAJA-CL), WASH DC 20310-2200.

3-31. Procedure for submitting an appeal

All appeals will be made on DA Form 2627 or DA Form 2627-1 and forwarded through the imposing commander or successor-in-command, when applicable, to the superior authority. The superior authority will act on the appeal unless otherwise directed by competent authority. The soldier may attach documents to the appeal for consideration. A soldier is not required to state reasons for the soldier's appeal; however, the soldier may do so. For example, the person may state the following in the appeal:

- a. Based on the evidence the soldier does not believe the soldier is guilty.
- b. The punishment imposed is excessive, or that a certain punishment should be mitigated or suspended.

3-32. Action by the imposing commander or the successor-in-command

The imposing commander or the successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (para 6, Part V, MCM, and para 3-33 of this regulation). If the imposing commander or a successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be recorded according to notes 11 and 12, DA Form 2627, or notes 9 and 10, DA Form 2627-1. The appellant will be advised and asked to state whether, in view of this action, the appellant wishes to withdraw the appeal. Unless the appeal is voluntarily withdrawn, the appeal will be forwarded to the appropriate superior authority. An officer forwarding the appeal may attach any matter in rebuttal of assertions made by the soldier. When the soldier desires to appeal, the imposing commander, or the successor-in-command, will make available to the soldier reasonable assistance in preparing the appeal and will promptly forward the appeal to the appropriate superior authority.

3-33. Action by the superior authority

Action by the superior authority on appeal will be entered in item 9, DA Form 2627, or item 5, DA Form 2627-1. A superior authority will act on the appeal expeditiously. Once the soldier has submitted an appeal, including all pertinent allied documents, the appeal normally should be decided within 5 calendar days (3 days for summarized proceedings). The superior authority may conduct an independent inquiry into the case, if necessary or desirable. The superior authority may refer an appeal in any case to a JA for consideration and advice before taking action; however, the superior authority must refer an appeal from certain punishments to a JA, whether or not suspended (see note 9, DA Form 2627). In acting on an appeal, the superior authority may exercise the same powers with respect to the punishment imposed as may be exercised by the imposing commander or the imposing commander's successor-in-command. However, the superior authority cannot change a filing determination. A timely appeal does not terminate merely because a soldier is discharged from the service. It will be processed to completion by the superior authority.

3-34. Action by a judge advocate

- a. When an appeal is referred to a JA, the superior authority will be advised either orally or in writing of the JA's opinion on—

(1) The appropriateness of the punishment.

(2) Whether the proceedings were conducted under law and regulations.

b. If the advice is given orally, that fact and the name of the JA who rendered the advice will be recorded in item 8, DA Form 2627.

c. The JA is not limited to an examination of written matters of the record of proceedings and may make any inquiries that are necessary.

3-35. Action by superior authority regardless of appeal

Any superior authority may exercise the same powers, except those of filing determinations (para 3-37), as may be exercised by the imposing commander, or the imposing commander's successor-in-command, whether or not an appeal has been made from the punishment (para 7f(1), Part V, MCM). "Any superior authority" has the same meaning as that given to the term "authority next superior" in paragraph 3-30, except that it also includes any authority superior to that authority. A soldier has no right to petition for relief under this paragraph and any petition so made may be summarily denied by the superior authority to whom it is addressed.

Section VII Records of Punishment, DA Form 2627 (para 8, Part V, MCM)

3-36. Records of punishment

All Article 15 actions, including notification, acknowledgement, imposition, filing determinations, appeal, action on appeal, or any other action taken prior to action being taken on an appeal, except summarized proceedings (sec III and fig 3-1), will be recorded on DA Form 2627. The DA Form 2627 is a record of completed actions and either the DA Form 2627 or a duplicate as defined in M.R.E. 1001(4) may be considered for use at courts-martial or administrative proceedings independently of any written statements or other documentary evidence considered by an imposing commander, a successor, or a superior authority.

3-37. Distribution and filing of DA Form 2627 and allied documents

a. *General.* DA Form 2627 will be prepared in an original and five copies. All written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal will be transmitted with the original (see g below). Copies of DA Form 2627 will be transmitted through the Military Personnel Division (MPD) or the Personnel Service Company (PSC) maintaining the Military Personnel Records Jacket (MPRJ) to the Finance and Accounting Office maintaining the soldier's pay account according to DA Pam 600-8, chapter 8. DA Form 268 (Report for Suspension of Favorable Personnel Actions) will be submitted per AR 600-8-2. Standard instructions for distribution and filing of forms for commissioned officers, warrant officers, and enlisted soldiers serving on active duty are set out below.

b. *Original of DA Form 2627.*

(1) *Place of filing.* For soldiers SPC or CPL and below (prior to punishment) the original will be filed locally in unit nonjudicial punishment files (file number 27-10f). 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 occurs first. For these soldiers, the imposing commander should annotate item 5 of DA Form 2627 as "Not Applicable (N/A)."

(a) For all other soldiers, the original will be sent to the appropriate custodian listed in (2) below 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. The filing decision of the imposing commander is final subject only to review when a previous DA Form 2627 that has not been wholly set aside is filed in the restricted fiche. (See para 3-6b.) The imposing commander's filing decision will be indicated in item 5, DA Form 2627. A superior

authority will not limit a subordinate commander's filing determination authority. (See para 3-7c regarding the withholding authority of a superior authority in general.) When the imposing commander makes a decision regarding the filing, the imposing commander should consider the following:

(b) The performance fiche is that portion of the OMPF that is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection.

(c) The restricted fiche is that portion of the OMPF that contains information not normally viewed by career managers or selection boards except as provided in AR 640-10 or specified in the Secretary of the Army's written instructions to the selection board.

(d) Records directed for filing in the restricted fiche will be redirected to the performance fiche in accordance with paragraph 3-6 if the soldier has other records of nonjudicial punishment reflecting misconduct in the grade of SGT or higher that have not been wholly set aside recorded in the restricted fiche. (See para 3-6).

(2) Mailing addresses. The original DA Form 2627 will be transmitted by the MPD/PSC to one of the following appropriate addresses—

(a) For active Army commissioned and warrant officers: HQDA (DAPC-MSP) (TAPC-MSP), ALEX VA 22332-0400 22332-0444.

(b) For USAR commissioned and warrant officers: U.S. Army Reserve Personnel Center, ATTN: DARP-PRD, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(c) For ARNG commissioned and warrant officers: Chief, Army National Guard Bureau, ATTN: NGB-ARP-CO, 111 South George Mason Drive, Arlington, VA 22204-1382.

(d) For active Army enlisted soldiers: U.S. Army Enlisted Records & Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249-5301.

(e) For USAR enlisted soldiers: U.S. Army Reserve Personnel Center, ATTN: DARP-PRD, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(f) For ARNG enlisted soldiers: State Adjutant General of the soldier's State, Commonwealth of Puerto Rico, Virgin Islands, or District of Columbia.

c. Copy one of DA Form 2627.

(1) For those Article 15s directed for filing on the performance fiche of the OMPF, forward to the MPD/PSC for filing in the MPRJ. Copy one will be filed in the permanent section of the MPRJ unless the original Article 15 is transferred from the performance to the restricted fiche of the OMPF. In this case, copy one will be withdrawn from the MPRJ and destroyed.

(2) For those Article 15s directed for filing on the restricted fiche of the OMPF, this copy will be filed in the unit personnel files and destroyed at the expiration of 2 years from the date of punishment or on the soldier's transfer, whichever occurs first. (See also DA Pam 600-8, chap 9, for use and preparation of DA Form 4187 (Personnel Action)).

(3) For soldiers in grades of SPC or CPL and below copy one will be destroyed. (See DA Pam 600-8, chap 9, for use and preparation of DA Form 4187.)

d. Copies two and three of DA Form 2627.

(1) Copies two and three for use as substantiating documents will be forwarded to the MPD/PSC that services the MPRJ if the punishment includes an unsuspended reduction and/or forfeiture of pay. If the punishment includes an unsuspended forfeiture of pay, the MPD/PSC will forward copy three to the Finance and Accounting Office maintaining the soldier's pay account.

(2) If all punishments affecting pay are suspended by the imposing commander, copies two and three will be retained by the unit where the punishment was imposed and destroyed on expiration of the period of suspension, unless forwarded according to paragraph 3-38 below. If the punishment, suspended or unsuspended, does not include reduction or forfeiture of pay, these copies will be destroyed.

(3) If a punishment affecting pay is suspended by a superior authority acting on an appeal, copy two will be retained by the unit where the punishment was imposed. It will be destroyed when the

period of suspension expires unless forwarded according to paragraph 3-38 below. If the punishment includes only a reduction, copy three will be forwarded to the MPD/PSC maintaining the MPRJ. If the punishment includes a reduction and a forfeiture or only a forfeiture, copy three will be forwarded through the MPD/PSC maintaining the MPRJ to the Finance and Accounting Office maintaining the soldier's pay account for use as a substantiating document according to AR 37-104-3.

e. Copy four of DA Form 2627.

(1) General. Immediately after imposition of punishment, copy four will be annotated in the left-hand corner of the title block (fig 3-2), sequentially in the order the Article 15 was given during the calendar year; that is, 84-1, 84-2. If the unit maintains a Reconciliation Log (para 3-39), the appropriate information will be entered in it. Thereafter, copy four will be used according to (2) and (3) below.

(2) Cases involving an appeal.

(a) On the date punishment is imposed, if item 7 is not completed or blocks b and c are initialed, and item 7 is signed by the soldier and the punishment includes an unsuspended reduction or unsuspended forfeiture of pay, copy four of DA Form 2627 will be marked "APPEAL PENDING" in the right-hand margin.

(b) Copy four will be sent through the MPD/PSC maintaining the MPRJ to the Finance and Accounting Office maintaining the soldier's pay account. On receipt, the local MPD/PSC and the Finance and Accounting Office maintaining the soldier's pay account will check that proper action has been taken on unsuspended reductions and forfeitures of pay. If the punishment includes a reduction, the MPD/PSC will see that the left-hand margin is annotated with the words, "ENTRY POSTED," the date of posting, and the initials of the posting clerk. If the punishment includes a forfeiture, finance will see that the left-hand margin is annotated with the words, "ENTRY POSTED," the date of posting, and the initials of the posting clerk.

(c) On receipt of the copies of DA Form 2627 forwarded by the unit (para 3-37d), copy four will be returned directly to the imposing commander to verify that the entry has been posted by finance (para 3-39). Copy four will be destroyed after all periods of suspension of punishment affecting pay have expired.

(d) If punishments affecting pay are suspended, copy four will not be transmitted to the MPD/PSC and finance. It will be destroyed after all periods of suspended punishments affecting pay have expired.

(e) If there are no punishments affecting pay, copy four will not be transmitted to the MPD/PSC and finance and will be destroyed after the entry is made in the Reconciliation Log.

(3) Cases not involving an appeal.

(a) Where there is no appeal and the punishment imposed includes an unsuspended reduction or unsuspended forfeiture of pay, copy four will not be marked "APPEAL PENDING." If the punishment imposed includes only an unsuspended reduction, copy four will be forwarded with copies two and three to the MPD/PSC that will see that the left-hand margin is annotated with the words "ENTRY POSTED," the date of posting, and the initials of the posting clerk. If the punishment imposed includes an unsuspended reduction and unsuspended forfeiture or only an unsuspended forfeiture, copy four will be forwarded with copy three to the Finance and Accounting Office maintaining the soldier's pay account that will see that the left-hand margin is annotated with the words "ENTRY POSTED," the date of posting, and the initials of the posting clerk. Copy four will be returned directly to the imposing commander to verify the entry has been posted by the MPD/PSC and/or finance (para 3-39) and destroyed after all periods of suspension of punishment affecting pay have expired.

(b) If punishments affecting pay are suspended, copy four will not be transmitted to the MPD/PSC and/or finance and will be destroyed after all periods of suspended punishments affecting pay have expired.

(c) If there are no punishments affecting pay, copy four will not be transmitted to the MPD/PSC and/or finance and will be destroyed after the entry is made in the Reconciliation Log.

f. Copy five of DA Form 2627. Give to soldier punished.

g. Allied documents. Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing on the restricted fiche of the OMPF (para 3-44).

3-38. Supplementary action

a. Supplementary action. Any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed under summarized proceedings, para 3-16) after action has been taken on an appeal or DA Form 2627 has been distributed according to paragraph 3-37 above.

b. Recording. Supplementary action will be recorded on DA Form 2627-2.

c. Distribution and filing.

(1) *Original.* The original will be forwarded to the appropriate custodian of the OMPF (para 3-37b(2)). This copy will be filed in the same OMPF fiche location as the DA Form 2627 that initially imposed the punishment. The imposing commander's filing determination on the initial DA Form 2627 will be annotated on the DA Form 2627-2 (fig 3-3).

(2) *Copy One.* Copy one will be forwarded to the MPD/PSC to be filed in the soldier's MPRJ when the imposing commander directs filing on the performance fiche of the OMPF. This copy will be destroyed along with copy one of the initial DA Form 2627 if the original DA Form is transferred from the performance to the restricted fiche. In cases of filing on the restricted fiche of the OMPF, copy one will be filed in the unit personnel files per paragraph 3-37c(2).

(3) *Copies two and three.* If the action affects a reduction, copy two (and copy two of the initial DA Form 2627, if maintained by the unit (para 3-37d)) will be forwarded to the MILPO MPD/PSC. If the action affects a forfeiture copy three will be forwarded to the finance and accounting office maintaining the soldier's pay account.

(4) *Copy four.* Copy four will be annotated with the same sequence number as the initial copy four (para 3-37e(2)). If the action affects a reduction, it will be forwarded to the MPD/PSC maintaining the MPRJ which will annotate it as indicated below. If the action affects a forfeiture, it will be forwarded to the finance and accounting office maintaining the soldier's pay account which will annotate as indicated below. Either the MPD/PSC, finance, or both will see that the following is annotated in the left-hand margin and returned to the unit to verify the entry of subsequent actions in the Reconciliation Log:

- (a) The words "ENTRY POSTED".
- (b) The date of posting.
- (c) The initials of the posting clerk.
- (5) *Copy five.* Give to soldier punished.

3-39. Reconciliation Log

Imposing commanders will ensure that punishments imposed under the provisions of Article 15 are executed. Punishments of reduction and forfeiture of pay may be monitored by the optional use of the Reconciliation Log, DA Form 5110-R (Article 15 Reconciliation Log), showing the punishment and date imposed. DA Form 5110-R will be locally reproduced on 8½- by 11-inch paper. A copy for reproduction is located at the back of this regulation. To properly use DA Form 5110-R, copy four of all DA Forms 2627 must be sequentially numbered and the required data entered in the DA Form 5110-R. These entries are to be compared with copy four of the DA Form 2627 that was returned to the unit by the MPD/PSC and/or Finance and Accounting Office maintaining the soldier's pay account. Sequential numbers on the DA Form 5110-R, will correspond to the number noted on copy four. After information is verified on the DA Form 5110-R from copy four, this copy will be retained until the expiration of any period of suspension of punishments affecting pay.

3-40. Time for distribution of Initial DA Form 2627

Distribution will be made according to paragraph 3-37 after the recipient indicates in item 7 that the recipient does not appeal. If the recipient appeals, the DA Form 2627, minus copy four (if it has

been forwarded as an "APPEAL PENDING" copy (para 3-37e(2)), will be forwarded to the superior authority and distributed after completion of item 10. Completion of this item shows that the recipient acknowledges notification of action on the recipient's appeal. If item 10 cannot be completed because the recipient is not reasonably available or due to military exigencies, a statement signed by the imposing commander stating that the recipient was informed in writing of the disposition of the appeal and why it was not possible to have item 10 completed will be placed in item 11 before distribution is made. When the recipient appeals the punishment, an "APPEAL PENDING" copy will be distributed according to paragraph 3-37e(2). If the recipient fails to complete or sign item 7, an explanation of the failure will be provided by the imposing commander in item 11 and distribution will be made according to 3-37 or this paragraph, whichever is applicable (a recipient's refusal to indicate whether or not the recipient desires to appeal may be presumed to indicate an intention not to appeal).

3-41. Filing of records of punishment imposed prior to 1 November 1982

a. OMPF. Records of nonjudicial punishment presently filed in either the performance or restricted fiche of the OMPF will remain so filed, subject to other applicable regulations. Records of nonjudicial punishment imposed prior to 1 November 1982 and forwarded on or after 20 May 1980 for inclusion in the OMPF will be filed on the performance fiche.

b. MPRJ.

(1) Records of nonjudicial punishment imposed prior to 1 November 1982 and filed under AR 640-10 in the MPRJ will remain so filed.

(2) Copies of records of nonjudicial punishment imposed prior to 1 November 1982 where the original was filed in the OMPF will remain filed in the MPRJ unless the original Article 15 is transferred to the restricted fiche. In this case, the copy will be withdrawn from the MPRJ and destroyed.

3-42. Transfer of Article 15s wholly set aside or in cases of change of status

a. Change in status on or after 1 September 1979. On approval of a change in status from enlisted to commissioned or warrant officer, on or after 1 September 1979, DA Forms 2627 (recording nonjudicial punishment received while in an enlisted status and filed in the OMPF) will be transferred to the restricted fiche of the OMPF. Copies of such records in the Career Management Individual File (CMIF) and the MPRJ will be destroyed.

b. Wholly set aside since 1 September 1979. All DA Forms 2627 of commissioned officers, warrant officers, and enlisted soldiers filed in the OMPF reflecting that punishments have been wholly set aside (para 3-28) since 1 September 1979, will routinely be transferred to the restricted fiche. The DA Form 2627 reflecting the original imposition of punishment, if filed in the MPRJ or CMIF, will be destroyed.

c. Change in status and wholly set asides prior to 1 September 1979.

(1) On request of the individual soldier, the following will be transferred to the restricted fiche of the soldier's OMPF:

(a) Records of nonjudicial punishment received while serving in a prior enlisted status.

(b) Records of nonjudicial punishment wholly set aside prior to 1 September 1979. Copies of such records filed in the CMIF and the MPRJ will be destroyed.

(2) Transfer from the performance to the restricted file will automatically cause copies of such records filed in the CMIF to be destroyed. Requests will be mailed directly to the custodian of the MPRJ (usually at the local MPD/PSC) and to the following custodian of the OMPF:

(a) For active Army commissioned and warrant officers, send requests to HQDA (TAPC-MSR-S), ALEX VA 22332-0444.

(b) For active Army enlisted personnel, send requests to U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249.

(3) These requests will not constitute a basis for review by a special selection board or its equivalent.

3-43. Transfer or removal of records of nonjudicial punishment

a. General. This paragraph covers policies and procedures for enlisted soldiers (SGT and above) and commissioned and warrant officers to petition the DA Suitability Evaluation Board (DASEB) for transfer of records of nonjudicial punishment from the performance to the restricted portion of the OMPF. (See table 3-2.)

b. Policies.

(1) Enlisted soldiers (SGT and above), commissioned and warrant officers may request the transfer of a record of nonjudicial punishment from the performance fiche of their OMPF to the restricted fiche under the provisions of this regulation. To support the request, the person must submit substantive evidence that the intended purpose of Article 15 has been served and that transfer of the record is in the best interest of the Army.

(2) Requests normally will not be considered until a minimum of 1 year has elapsed and at least one nonacademic evaluation report has been received since imposition of the punishment.

(3) The request must be in writing and should include the soldier's current unit mailing address and duty telephone number. Requests by enlisted soldiers (SGT and above) should also include a true copy of the DA Form 2 (Personnel Qualification Record—Part I, DA Form 2A (Personnel Qualification Record, Part I—Enlisted Peacetime), and DA Form 2-1 (Personnel Qualification Record—Part II), certified by the custodian of the MPRJ. No person is authorized to appear in person before the DASEB.

(4) The officer who directed the filing of the record in the OMPF (of enlisted soldiers (SGT and above) and commissioned and warrant officers) may provide a statement to the soldier in support of a request for transfer of the record from the performance to the restricted fiche. Other evidence submitted in support of a request should not include copies of documents already recorded in the soldier's OMPF.

(5) The DASEB will review and evaluate the evidence submitted and obtained and will take final action where this authority has not been specifically withheld to the Deputy Chief of Staff for Personnel (DCSPER) or the DCSPER's delegate. Requesters will be notified in writing of the determination. Letters of denial will be placed upon the performance fiche of the soldier concerned. Other related documentation and evidence will be placed upon the restricted fiche.

(6) The DASEB has access to unfavorable information that might be recorded on DoD investigative records. If such information is used, in part or in whole, as the basis for denying a request, the soldier will be notified of this by correspondence (which will not be filed in the OMPF) and given an opportunity to review and explain the unfavorable information in a subsequent petition.

(7) The determination of the DASEB to transfer such records will not alone be a basis for review by a special selection board or its equivalent. The DCSPER, or the DCSPER's delegate, has the final authority in cases where circumstances exist that warrant referral to one of the above boards.

(8) The DASEB will consider subsequent requests only upon presentation of substantive evidence not previously considered.

c. Processing Requests.

(1) *Active Army personnel.* Requests in military letter format should be prepared and sent directly to the President, DA Suitability Evaluation Board, HQDA (DAPE-MPC-E), WASH DC 20315-0300.

(2) *Reserve component personnel.*

(a) Requests submitted by USAR officer and enlisted soldiers not on active duty are normally processed through the Commander, U.S. Army Reserve Personnel Center (ARPERCEN), 9700 Page Boulevard, St. Louis, Missouri 63132-5200. For officers, requests should be sent ATTN: DARP-OPM-A; for enlisted soldiers, ATTN: DARP-EPO. Commander, ARPERCEN will refer the appeal through the Office of the Chief, Army Reserve (ATTN: DAAR-PE) to the DCSPER (ATTN: DAPE-MPC-E) with a recommendation. The DASEB will then take action on the request.

(b) Requests submitted by ARNG officers and enlisted soldiers not on active duty will be processed through the proper, State Adjutant General and the Chief, National Guard Bureau to the DCSPER (ATTN: DAPE-MPC-E) for proper action.

d. Amendment rights. These procedures do not limit or restrict the right of soldiers to request amendments of their records under the Privacy Act and AR 340-21. Neither do they limit or restrict the authority of the DASEB to act as an Access and Amendment Refusal Authority under AR 340-21.

e. Correction of military records. AR 15-185 contains policy and procedures for applying to the Army Board for Correction of Military Records (ABCMR) and for the correction of military records by the Secretary of the Army. Requests should be sent to the ABCMR to correct an error or remove an injustice only after other available means of administrative appeal have been exhausted. This includes requests under this paragraph. Absent compelling evidence to the contrary, a properly completed, facially valid DA Form 2627 will not be removed from a soldier's record by the ABCMR.

3-44. Use of records

a. Records of proceedings and supplementary action under Article 15 recorded on DA Forms 2627 and 2627-2, previously or hereafter administered, may be used as directed by competent authority. Allied documentation transmitted with the original or copies of DA Forms 2627 and 2627-2, where filed with any of these forms, shall be considered to be maintained separately for the purpose of determining the admissibility of the original or copies of DA Forms 2627 or 2627-2 at courts-martial or administrative proceedings.

b. A record of nonjudicial punishment or a duplicate as defined in M.R.E. 1001(4), not otherwise inadmissible, may be admitted at courts-martial or administrative proceedings from any file in which it is properly maintained by regulation. A record of nonjudicial punishment, otherwise properly filed, will not be inadmissible merely because the wrong copy was maintained in a file.

**Table 3-1
Maximum Punishments**

Punishment	Imposed By Company Grade Officers	Imposed By Field Grade Officers	Imposed By Field Grade and General Officers	Imposed By General Officers or GCM Convening Authorities
A. MAXIMUM PUNISHMENT FOR ENLISTED MEMBERS				
(NOTE: The maximum punishment imposable by any commander under Summarized Procedures will not exceed extra duty for 14 days, restriction for 14 days, oral reprimand, or any combination thereof.				
Admonition/Reprimand	Yes		Yes	
AND				
Extra Duties	14 days		45 days	
AND ¹				
Restriction	14 days		60 days	
or				
Correctional Custody ²				
(E1 thru E3)	7 days		30 days	
or				
Restricted Diet Confinement				
(E1 thru E3 attached or embarked on vessel)	3 days		4 days	
AND				
Reduction: (E1 thru E4)	One grade		One or more grades	
(E5 thru E6)			One grade in peacetime ⁴	
AND				
Forfeiture: ³	7 days' pay		½ of 1 month's pay for 2 months	
B. PUNISHMENT FOR COMMISSIONED AND WARRANT OFFICERS				
Admonition/Reprimand ⁷	Yes	Yes		Yes
AND				
Arrest	No	No		30 days
or				
Restriction	30 days	30 days		60 days
AND				
Forfeiture	No	No		½ of 1 month's pay for 2 months
C. COMPUTING MONTHLY AUTHORIZED FORFEITURES OF PAY UNDER ARTICLE 15, UCMJ				
1. UPON ENLISTED PERSONS				
a. $(\text{Monthly Basic Pay}^{3.5}) + (\text{Foreign Pay}^{3.6}) \div 2 = \text{Maximum forfeiture per month if imposed by major or above.}$				
b. $(\text{Monthly Basic Pay}^{3.5}) + (\text{Foreign Pay}^{3.6}) \times 7 \div 30 = \text{Maximum forfeiture if imposed by captain or below.}$				
2. UPON COMMISSIONED AND WARRANT OFFICERS WHEN IMPOSED BY AN OFFICER WITH GENERAL COURT-MARTIAL JURISDICTION OR BY A GENERAL OFFICER IN COMMAND.				
$(\text{Monthly Basic Pay}^5) \div 2 = \text{Maximum authorized forfeiture per month.}$				
Notes:				
1. Combinations of extra duties and restriction cannot exceed the maximum allowed for extra duty.				
2. Subject to limitations imposed by superior authority, and presence of adequate facilities under AR 190-34. If punishment includes reduction to E3 or below, reduction must be unsuspended.				
3. Amount of forfeiture is computed at the reduced grade, even if suspended, if reduction is part of the punishment imposed. For Reserve Component (RC) soldiers, use monthly basic pay for the grade and time in service of an Active Component (AC) soldier. (See para 21-9.)				
4. Only if imposed by a field grade commander of a unit authorized a commander in the grade of O5 or higher. In the RC, reduction is only authorized from grade E5. RC soldiers of grade E6 and higher may not be reduced by Article 15 punishment.				
5. At the time punishment is imposed.				
6. If applicable.				
7. In the case of Commissioned officers and warrant officers, admonitions and reprimands given as nonjudicial punishment must be administered in writing (para 5c(1), Part V, MCM 1984).				
8. Forfeitures imposed by a company grade commander may not be applied for more than (1) month against the pay of an Active Army soldier.				

**Table 3-2
Removal of Records of Nonjudicial Punishment From Military Personnel Files**

R U L E	If a	Then the Record of Nonjudicial Punishment (DA Form 2627) filed in		providing that
		on the basis that	the performance portion of the OMPF	
1	commander who imposed the punishment, successor in command, or next superior authority sets aside the punishment	evidence exists which demonstrates that the punishment resulted in a 'clear injustice' (para 3-28)	will be transferred to the restricted portion of the OMPF and the copy in the MPRJ removed	will remain so filed
2	member in the grade of E6 or above applies to the DA Suitability Evaluation Board (DASEB) for transfer of the record of nonjudicial punishment from the performance portion of the OMPF	the record of nonjudicial punishment has served its purpose and that removal is in the best interest of the Army	will, on approval of the member's application, be transferred to the restricted portion of the OMPF and the copy in the MPRJ removed	
3	member in the grade of E5 or below applies to the Army Board for Correction of Military Records (ABCMR) for transfer of records of nonjudicial punishment from the performance portion of the OMPF	evidence exists which demonstrates error or injustice to a degree justifying removal		
4	member in the grade of E6 or above applies to the ABCMR for transfer of the record of nonjudicial punishment from the performance portion of OMPF	evidence exists which demonstrates error or injustice to a degree justifying removal		if the member applies on the basis of error or injustice on the grounds that the record of punishment has served its purpose and that removal is in the best interest of the Army, the member has already applied to DASEB and the request was denied.

SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is TJAG.

See Notes on Reverse Before Completing Form

This form will be used only in cases involving enlisted personnel and then ONLY when no punishment OTHER THAN oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof has been imposed.

NAME HABE, ALFRED H.	GRADE E-3	SSN 111-11-1111	UNIT A Btry 9/10 FA, 13 INF DIV FT BLANK, VA
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1. On 15 JUNE 1985, the above service member was advised that I was considering imposition of nonjudicial punishment under the provisions of Article 15, UCMJ, Summarized Proceedings, for the following misconduct:

On or about 0900 hours 13 June 1985, you were absent without authority from A Btry, 9/10 FA, 13th Inf Div, located at Ft Blank, VA, and remained so absent until on or about 0800 hours, 14 June 1985, in violation of Article 86, UCMJ.

2. The member was advised that no statement was required, but that any statement made could be used against him or her in the proceeding or in a court-martial. The member was also informed of the right to demand trial by court-martial, the right to present matters in defense, extenuation and/or mitigation, that any matters presented would be considered by me before deciding whether to impose punishment, the type or amount of punishment, if imposed, and that no punishment would be imposed unless I was convinced beyond a reasonable doubt that the service member committed the misconduct. The service member was afforded the opportunity to take 24 hours to make a decision regarding these rights. No demand for trial by court-martial was made. After considering all matters presented, the following punishment was imposed:

Oral reprimand and restriction for 14 days.

3. The member was advised of the right to appeal to the CA 9/10 FA, 13 Inf Div within 5 calendar days, that an appeal made after that time could be rejected as untimely, and that the punishment was effective immediately unless otherwise stated above. The member:

Elected immediately not to appeal Requested time to decide whether to appeal and the decision is indicated in Item 4, below

DATE 15 June 1985	NAME, GRADE, AND ORGANIZATION OF IMPOSING COMMANDER Richard J. Moad, CPT, A Btry, 9/10 FA	SIGNATURE <i>Richard J. Moad</i>
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4. (Initial appropriate block, date, and sign)

a. I do not appeal b. I appeal and do not submit matters for consideration c. I appeal and submit additional matters

DATE 15 June 1985	NAME AND GRADE OF SERVICE MEMBER ALFRED H. HABE, E-3	SIGNATURE <i>Alfred H. Habe</i>
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5. After consideration of all matters presented in appeal, the appeal is:

Denied Granted as follows:

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE

6. I have seen the action taken on my appeal.	DATE	SIGNATURE OF SERVICE MEMBER

7. ALLIED DOCUMENTS AND/OR COMMENTS

[SEE CHAPTER 15]

DA FORM 2627-1
AUG 84

EDITION OF NOV 82 IS OBSOLETE

Figure 3-1. DA Form 2627-1 Illustrated

NOTES

- 1/ See AR 27-10 for further guidance. Ordinarily entries on this form will be handwritten in ink.
- 2/ Insert a concise statement of each offense in terms stating a specific violation and the Article of the UCMJ. If additional space is needed, use item 7 and/or continuation sheets as described in note 9 below.
- 3/ Inform the member that if he or she demands trial, trial could be by SCM, SPCM, or GCM. Additionally, inform the member that he or she may object to trial by SCM and that at SPCM or GCM he or she would be entitled to be represented by qualified military counsel, or by civilian counsel at no expense to the government. If the member is attached to or embarked in a vessel, he or she is not permitted to refuse Article 15 punishment. In such cases, all reference to a demand for trial will be lined out and an appropriate remark will be made in item 7 indicating the official name of the vessel and that the member was attached to or embarked in the vessel at the time punishment was imposed.
- 4/ Offenses determined not to have been committed will not be listed. If the imposing commander decides not to impose punishment, the member will be notified and no copies of this record will be prepared. If a punishment is suspended, the following statement should be added after it: "To be automatically remitted if not vacated before (date)."
- 5/ If the member immediately elects not to appeal, item 5 will not be completed.
- 6/ The imposing commander will initial the appropriate block.
- 7/ If the individual appeals, this form and all matters set forth in item 7 will be forwarded to the superior authority.
- 8/ The superior authority will initial the appropriate block. Refer to note 10, below.
- 9/ In this space indicate the number of pages as follows: Allied documents on appeal consist of _____ pages. Allied documents include all written matters considered by the imposing commander, submitted by the member on appeal, commander's rebuttal, and copies of supplementary actions taken on the punishment. Supplementary actions will be recorded in accordance with note 10. If additional space is needed for completion of any item(s), use plain bond headed "Continuation Sheet 1," etc.
- 10/ Applicable portions of the following suggested formats may be used to record action taken on an appeal and supplementary actions for summarized Article 15 proceedings. Appropriate language should be entered in item 7 or, if necessary, on continuation sheets.
 - a. Suspension, Mitigation, Remission, or Setting Aside.

On (date) the punishment(s) of _____
imposed on (date of punishment) (was) (were) (suspended and will be automatically remitted if not vacated before (date))
(mitigated to) (set aside, and all rights, privileges, and property affected restored) (by my order) (by order of) (the officer who
imposed the punishment) (the successor in command to the imposing commander) (as superior authority).

(Typed name, grade, and organization of commander) /s/ _____
 - b. Vacation of Suspension.

The suspension of the punishment(s) of _____
imposed on (date of punishment) (is) (are) hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed.

(Typed name, grade, and organization of commander) /s/ _____
- 11/ Racial/ethnic identifiers will be placed in item 7 (Chap 15, AR 27-10).

Reverse of DA Form 2627-1, Aug 84

Figure 3-1. DA Form 2627-1 Illustrated—Continued

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ			
For use of this form, see AR 27-10; the proponent agency is TJAG.			
See Notes on Reverse Before Completing Form			
NAME AGER, Robert L.	GRADE E4	SSN 000-00-0000	PAY (Basic & Sea/Foreign) \$830.40
UNIT Co D, 1/5 Inf, Ft Blank, VA 00000-0000			
<p>1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: <u>1/</u> At Ft Blank, VA, on or about 0600 hours, 5 Sep 97, you did, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Formation, Co D, 1/5 Inf, in front of Building 13. This is in violation of Article 86, UCMJ.</p> <p>2. You are not required to make any statements, but if you do, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished at all (matters of defense) or why punishment should be very light (matters of extenuation and mitigation). I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. <u>2/</u> If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial by court-martial instead. <u>3/</u> In deciding what you want to do you have the right to consult with legal counsel located at Room 7, Building 10, Ft Blank, VA. You now have 48 hours to decide what you want to do <u>4/</u></p>			
DATE 6 Sep 97	NAME, GRADE, AND ORGANIZATION OF COMMANDER JAMES A. SMITH, CPT, Co D, 1/5 Inf		SIGNATURE <i>James A. Smith</i>
TIME OF HEARING 10 hours	<p>3. Having been afforded the opportunity to consult with counsel, my decisions are as follow: (Initial appropriate blocks, date, and sign)</p> <p>a. <input type="checkbox"/> I demand trial by court-martial.</p> <p>b. <input checked="" type="checkbox"/> I do not demand trial by court-martial and in the Article 15 proceedings:</p> <p>(1) I request the hearing be <input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed. (2) A person to speak in my behalf <input type="checkbox"/> Is <input checked="" type="checkbox"/> Is not requested.</p> <p>(3) Matters in defense, mitigation, and/or extenuation: <input type="checkbox"/> Are not presented <input checked="" type="checkbox"/> Will be presented in person <input type="checkbox"/> Are attached.</p>		
DATE 7 SEP 97	NAME AND GRADE OF SERVICE MEMBER ROBERT L. AGER, SP4		SIGNATURE <i>Robert L. Ager</i>
<p>4. In a(n) <input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed hearing <u>1/</u> all matters presented in defense, mitigation, and/or extenuation, having been considered, the following punishment is imposed: <u>1/2/</u> Reduction to Private First Class (E3), suspended, to be automatically remitted if not vacated before 5 Nov 97; and forfeiture of \$100.00.</p> <p>[NOTE: REFER TO PARA 3-37b(1) PRIOR TO COMPLETING ITEM 5.]</p> <p>5. I did file original DA Form 1627 to be filed at the <input checked="" type="checkbox"/> Fort Belvoir/Scott AFB <input checked="" type="checkbox"/> Restricted Area of the OMPA <input type="checkbox"/> N/A</p> <p>6. You are advised of your right to appeal to the COE, 1/5 Inf within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.</p>			
DATE 7 Sep 97	NAME, GRADE, AND ORGANIZATION OF COMMANDER JAMES A. SMITH, CPT, Co D, 1/5 Inf		SIGNATURE <i>James A. Smith</i>
<p>7. (Initial appropriate block, date, and sign)</p> <p>a. <input type="checkbox"/> I do not appeal b. <input checked="" type="checkbox"/> I appeal and do not submit additional matters <u>1/2/</u> c. <input type="checkbox"/> I appeal and submit additional matters <u>1/2/</u></p>			
DATE 7 SEP 97	NAME AND GRADE OF SERVICE MEMBER ROBERT L. AGER, SP4		SIGNATURE <i>Robert L. Ager</i>
<p>8. I have considered the appeal and it is my opinion that: The proceedings were conducted in accordance with law and regulation and the punishments imposed were not unjust nor disproportionate to the offense committed.</p>			
DATE 8 Sep 97	NAME AND GRADE OF JUDGE ADVOCATE LEWIS H. RANE, MAJ		SIGNATURE <i>Lewis H. Rane</i>
<p>9. After consideration of all matters presented in appeal, the appeal is:</p> <p><input checked="" type="checkbox"/> Denied <input type="checkbox"/> Granted as follows: <u>1/1/</u></p>			
DATE 9 Sep 97	NAME, GRADE, AND ORGANIZATION OF COMMANDER LARRY Z. LIPE, LTC, 1/5 Inf.		SIGNATURE <i>Larry Z. Lipe</i>
10. I have seen the action taken on my appeal.		DATE 9 SEP 97	SIGNATURE OF SERVICE MEMBER <i>Robert L. Ager</i>
<p>11. ALLIED DOCUMENTS AND/OR COMMENTS <u>11/12/13/</u></p> <p>Statement by SFC Jones, dated 5 Sep 97</p>			
[NOTE: SEE CHAPTER 15]			

DA FORM 2627
AUG 84

EDITION OF NOV 82 IS OBSOLETE

Figure 3-2. DA Form 2627 Illustrated

NOTES

- 1/ Insert a concise statement of each offense in terms stating a specific violation and the Article of the UCMJ (Part IV, MCM). If additional space is needed, use item 11 or continuation sheets as described in note 11 below.
- 2/ Inform the member of the maximum punishment which may be imposed under Article 15.
- 3/ Inform the member that if he or she demands trial, trial could be by BCM, SPCM, or GCM. Additionally, inform the member that he or she may object to trial by BCM and that at SPCM or GCM he or she would be entitled to be represented by qualified military counsel, or by civilian counsel at no expense to the government. If the member is attached to or embarked in a vessel, he or she is not permitted to refuse Article 15 punishment. In such cases, all reference to a demand for trial will be lined out and an appropriate remark will be made in item 11 indicating the official name of the vessel and that the member was attached to or embarked in the vessel at the time punishment was imposed.
- 4/ Give the member copy 5 of this form.
- 1/ Offenses determined not to have been committed will be lined out. If the imposing commander decides not to impose any punishment, the member will be notified and all copies of this form destroyed.
- 4/ Amounts of forfeitures of pay will be rounded off to the next lower whole dollar. If a punishment is suspended, the following statement should be added after it: To be automatically remitted if not vacated before (date). If punishment includes a written admonition or reprimand, it will be attached to this form and listed in item 11.
- 1/ The imposing commander will initial the appropriate block. The OMPF performance fiche is routinely used by MOS/specialty career managers and DA selection boards. The OMPF restricted fiche is not given to MOS/specialty career managers or DA selection boards without approval of the Cdr, MILPERCEN or selection board proponent.
- 1/ If the member appeals, this form and all written evidence considered by the imposing commander will be forwarded to the superior authority.
- 1/ Before acting on an appeal, it must be referred to a judge advocate for advice when the punishment, whether or not suspended, includes reduction of one or more pay grades from the fourth or a higher pay grade, or is in excess of one of the following: 7 days arrest in quarters, 7 days correctional custody, 7 days forfeiture of pay, or 14 days of either extra duties or restriction. (See Article 15e(1) to (7), UCMJ.)
- 1B/ The superior authority will initial the appropriate block. If the appeal is granted, the specific relief granted will be stated according to note 12.
- 1/ In this space indicate the number of pages attached as follows: Allied documents on appeal consist of _____ pages. Allied documents include all written matters considered by the imposing commander submitted by the member on appeal and the commander's rebuttal, if applicable. If additional space is needed for completion of any item(s), use plain bond headed "Continuation Sheet 1", etc.
- 12/ Applicable portions of the following format may be used to record action taken on appeal. Appropriate language should be entered in item 11 or, if necessary, on a continuation sheet. Supplementary actions (para 3-38, AR 27-10) will be recorded on DA Form 2627-2.

Suspension, Mitigation, Remission, or Setting Aside (DATE)

On (date), the punishment(s) of _____ imposed on (date of punishment) (was) (were) (suspended and will be automatically remitted if not vacated before (date)) (mitigated to) (set aside, and all rights, privileges, and property effected restored) (by my order) (by order of) (the officer who imposed the punishment) (the successor in command to the imposing commander) (as superior authority).

(Typed name, grade, and organization of commander) /s/ _____
- 1B/ Racial/ethnic identifiers will be placed in item 11 (Chapter 15, AR 27-10).

Reverse of DA Form 2627, Aug 84

Figure 3-2. DA Form 2627 illustrated—Continued