

LEGADMINMAN

CHAPTER 3

ENLISTED NONJUDICIAL PUNISHMENT MATTERS AND  
PREPARATION OF THE UNIT PUNISHMENT BOOK

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3000. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT

1. Commanding Officers. All commanding officers may impose punishment under Article 15, UCMJ upon military personnel of their command. For purposes of this paragraph, "commanding officer" is defined as one who is properly appointed to command an organization, or who, under applicable provisions of law, regulations, or orders, succeeds to such command due to transfer, incapacity, death, or absence of the previous commander. "Commanding officer" includes a commissioned warrant officer exercising command. Marine Corps commanding officers are titled as Commandant, Commander, Commanding General, Commanding Officer, Director, and Inspector-Instructor. Other titles used to designate Marine Corps commanders shall be made only with the specific approval of the Commandant of the Marine Corps. With the exception of delegations of authority to impose NJP from a general officer in command to a principal assistant, which require the express prior approval of the Commandant of the Marine Corps (see section 0106c, JAGMAN), the authority to impose NJP cannot be delegated unless by specific authorization of the Secretary of the Navy. "Acting" commanders do not have authority to impose NJP solely by virtue of their acting status.

2. Officers in Charge. Officers in charge of units designated by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached, or orders of the senior officer present, are empowered to impose nonjudicial punishment upon enlisted personnel assigned to their unit. An officer in charge, regardless of grade, in addition to imposing an admonition or reprimand, is limited to those punishments authorized by the UCMJ for company grade officers.

3001. JURISDICTION OVER ACCUSED

1. At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary duties.

2. For the imposition of nonjudicial punishment, a person who has been designated a party before a fact-finding body convened under JAGMAN, Chapter II, remains thereafter "of the command" of the unit or organization to which assigned or attached at the time of such designation. This is for the limited purpose, however, of imposing a letter of admonition or reprimand, and imposition of NJP is valid even though, for other purposes, that person may have been assigned or attached to another command before such letter was delivered. This status terminates automatically when all action contemplated by Article 15, UCMJ, including action on an appeal, has been completed. (See section 0107a(2), JAGMAN.)

3. Except as provided in paragraph 3001.2, if, at the time nonjudicial punishment is to be imposed, the accused is no longer assigned or attached to the same unit or command, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual accused. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction.

#### 4. Jurisdiction over Reservists

a. Members of the Reserve component on active duty or inactive duty training are subject to the UCMJ. Such members are not, by virtue of termination of a period of active duty or inactive duty training, relieved from amenability to jurisdiction of the UCMJ for offenses committed during such periods of active duty or inactive duty training and may be ordered to active duty for the sole purpose of disciplinary proceedings. (See sections 0107b, 0123d, 0123e, and 0123f, JAGMAN.)

b. As a matter of policy, any physical restraint pending nonjudicial punishment or imposed as NJP shall not extend beyond the normal time of termination of a drill or training period.

5. Effect of Expiration of Active Service (EAS) of Marines Pending or Undergoing Nonjudicial Punishment. A Marine may not be involuntarily retained in the service beyond normal EAS for the purpose of imposing NJP or to serve punishment previously imposed at NJP, or to be a witness at NJP.

3002. ADVICE TO ACCUSED BEFORE IMPOSITION OF NJP. An accused Marine may have NJP imposed without first being accorded the opportunity to consult with a judge advocate, but the results of any such NJP are not admissible as a matter in aggravation at any subsequent court-martial proceeding. As a matter of policy, however, an opportunity to consult with a judge advocate should be accorded to those who request such, if at all practicable (telephone may be used). This will ensure the Marine has been afforded all legal rights prior to the imposition of

NJP as provided by section 0109, JAGMAN. (See also Appendices A-1-b, A-1-c, and A-1-d, JAGMAN.)

3003. QUANTUM OF PUNISHMENTS-COMBINATION. Paragraph 5d of Part V, MCM, 1998, contains instructions concerning combination of nonjudicial punishments.

3004. FORFEITURES IMPOSED AS NONJUDICIAL PUNISHMENT

1. Forfeitures imposed as nonjudicial punishment must be expressed in whole dollar amounts only--not in dollars and cents (e.g., \$100.25), not in "days pay" (e.g. 10 days pay), and not in fractions (e.g., 1/2 of a month's pay). See paragraph 5 of Part V, MCM, 1998.
2. The maximum permissible forfeiture is determined by rounding down to whole dollar amounts.
3. The maximum permissible forfeiture which can be imposed by a company grade officer or officer in charge at NJP is determined by dividing a month's base pay by 30, multiplying the result by seven, and rounding down to a whole dollar amount.
4. If a reduction is also imposed, whether or not such reduction is suspended, the maximum permissible forfeitures must be computed on the pay of the grade to which reduced. See paragraph 5 of Part V, MCM, 1998.

3005. SUSPENSION, REMISSION, MITIGATION, SETTING ASIDE

1. Article 15(d), UCMJ and paragraph 6 of Part V, MCM, 1998, provide that an officer who imposes nonjudicial punishment may suspend, remit or mitigate any part or amount of the unexecuted portion of that punishment; may set aside in whole or in part that punishment, whether executed or unexecuted; and may restore all rights, privileges and property affected by that punishment.
2. In addition to the officer who imposed the punishment, the following officers may also take remedial action: a successor in command to the imposing officer; the commander of any command to which the Marine is subsequently transferred; and, any other officer authorized to act on the punishment imposed.
3. There are certain restrictions on remedial action concerning punishment:
  - a. The power to set aside punishments and to restore some or all rights, privileges and property affected by the executed portions of a punishment should ordinarily be exercised only when the authority

considering the case believes that, under all circumstances of the case, the punishment has resulted in a clear injustice.

b. The power to set aside an executed punishment, or to mitigate an executed or unexecuted reduction in grade to a forfeiture of pay, should be exercised within 4 months after the date of execution. See paragraph 6(b) of Part V, MCM, 1998.

c. Suspension of an executed punishment of reduction or forfeiture of pay may be accomplished only within 4 months of the date the punishment is executed.

### 3006. UNIT PUNISHMENT BOOK (UPB)

1. A Unit Punishment Book (UPB) form (NAVMC 10132) will be used to record the imposition of NJP for enlisted personnel. When reporting nonjudicial punishment of officers, comply with chapter 4 of this Manual.

2. When an officer exercising Article 15, UCMJ authority receives information that an offense punishable under the UCMJ has been committed by an enlisted person under that officer's jurisdiction, and that officer further determines that the offense should either be disposed of at nonjudicial punishment or be referred to higher authority, a UPB form will be prepared.

3. The UPB form will be prepared in duplicate and may be typewritten or handwritten (legibly) in black or blue-black ink. The completed duplicate UPB form will be filed, after completion of all items, in the originating unit's files (Standard Subject Identification Code 5812). The duplicate UPB form does not require original signatures or initials. Authorized abbreviations are encouraged. (See MCO P1070.12J, IRAM.) When there is insufficient space for an item, the reverse side of the UPB form or a sheet of bond paper may be used. Additional sheets will be securely stapled to the UPB form.

4. The use of correction tape and/or fluid is not authorized. Changes and corrections will be made by drawing a thin-inked line (using black or blue-black ink) through the character(s)/numeral(s)/word(s) to be changed or corrected. The new information will be entered directly above or below the original information, or explained in item 18, as applicable.

### 5. Detailed Preparation Instructions

a. Item 1. Enter last name, first name, and middle initial of the Marine.

b. Item 2. Enter grade and pay grade; e.g., LCpl, E-3.

c. Item 3. Enter social security number; e.g., 123 45 6789.

d. Item 4. Enter the complete identification of the Marine's unit; e.g., company/battery/squadron/group/battalion

e. Item 5. Do not use charge/specification as in courts-martial. If there are multiple infractions of an article of the UCMJ, repeat the article as indicated below. Enter the article(s) of the UCMJ violated and a summary of each offense, to include date, time, and place of the alleged offense. Examples:

Art. 90. Struck Capt Smith with fists at HqCo, HqBn, 3d MarDiv, at 0930, 10 Nov 98.

Art. 90. At Co A, 1st Bn, 7th Mar (deployed) on 11 Mar 98, willfully disobeyed Capt Green's order to get a haircut.

Art. 86. UA fr HqCo, HqBn, 3d MarDiv dur the prd 0800, 11 Nov 98 through 2359, 15 Nov 98.

Art. 86. At HqCo, HqBn, 3d MarDiv, failed to go at the time prescribed to morning formation at 0800 on 11 Nov 98.

f. Item 6. After advising the Marine in accordance with Article 31, UCMJ and section 0104, JAGMAN, require the Marine to indicate intentions by striking out inapplicable portions, unless the Marine is attached to or embarked aboard a naval vessel. In such cases, strike out with a single black or blue-black ink line all sentences after the first sentence. See section 0109, JAGMAN. Thereafter, require the Marine to date and sign the item. When a Marine refuses to indicate an intention and/or refuses to sign, process charges as a refusal to accept NJP and forward the UPB to the officer exercising court-martial jurisdiction for disposition. Note in item 6, "See item 18." Note in item 18, "Marine refuses to indicate intentions or to sign item 6. Case forwarded recommending (special court-martial), (summary court-martial), etc."

g. Item 7. Upon ensuring that the individual has been informed of the rights enumerated in item 6, the immediate commanding officer will date and sign item 7. This action must be accomplished prior to imposition of NJP and this item must, therefore, be dated on or before the date NJP is imposed.

h. Item 8. Enter punishment imposed and date of imposition. The entry "No punishment" is invalid. Unless a punishment listed in Article 15, UCMJ, is levied at the proceedings, NJP has not been imposed and no record will be maintained in the UPB binder. Sample forms of authorized punishments follow. Certain phrases in these examples are underscored merely to highlight areas where deviation from the prescribed wording frequently has resulted in ambiguity.

Other guidance is provided in parentheses. UPB form entries need not contain underlines or references.

Restr to the limits of HQSVCCo, 1st Bn, 3d Mar for 14 das, w/o susp fr du. 2 Jun 98. (See par. 5c(2) of Part V, MCM, 1998.)

Forf of \$100 pay per month for 2 months. Total forf \$200. 2 Jun 98. (Always state forfeitures in whole dollar amounts.)

Corr cust for 7 das w/susp fr du. 2 Jun 98.

Corr cust for 6 das w/o susp fr du. 2 Jun 98.

Restr to the limits of place of mess, bil, du and worship and most dir route to and fr w/o susp fr du for 14 das and extra du for 14 das, to run concurrently. 2 Jun 98.

To be red to LCpl, E-3, and to be orally reprimanded. 2 Jun 98.

i. Item 9. Enter the date and the specific terms of the suspension. If no portions of the punishment are suspended, enter the word "None." When suspending all or portions of the punishment, the specific punishment, the length of the suspension, and the terms for automatic remission will be reflected. Example:

2 Jun 98. Red to LCpl, E-3, susp for 3 mos, at which time, unless sooner vacated, the red will be remitted w/o further action.

j. Item 10. Enter name, grade, and title of the officer who took the action listed in item 8.

k. Item 11. When the officer imposing punishment determines that the offenses are properly punishable under Article 15, UCMJ, the officer so determining will sign this item.

l. Item 12. Enter the date of notification to the Marine. This will normally be the same date as item 8 except where a formal investigation is used as a basis for the NJP or notification is done by mail.

m. Item 13. When NJP has been imposed, notify the Marine of the right to appeal. (See paragraph 7 of Part V, MCM, 1998, and section 0110e, JAGMAN.) The officer imposing NJP shall date and sign the item. This will normally be the same date as item 8 and will, in no case, be prior to the date in item 8.

n. Item 14. The Marine upon whom NJP is imposed shall date and sign this item indicating an understanding of the right to appeal the NJP imposed. When a Marine refuses to indicate an understanding of the right to appeal and/or refuses to sign item 14, note in item 14,

"See item 18" and place the following entry in item 18: "Marine refuses to indicate intentions or sign item 14."

o. Item 15. Enter date of the appeal of the NJP. If not appealed, enter the words "Not appealed."

p. Item 16. If an appeal is made, enter the final action and date thereof. Examples:

Appeal denied - 25 Jun 98.

Appeal granted, punishment set aside - 25 Jun 98.

Red set aside, no further relief granted - 25 Jun 98.

This item will be signed by the officer acting on the appeal, or it may be signed "by direction" of the officer acting on the appeal.

q. Item 17. Enter the date the Marine was notified of the decision on the appeal. If the Marine has been transferred or discharged, enter the date of the endorsement forwarding the decision to the Marine's new command or to the Marine's permanent mailing address.

r. Item 18

(1) Entries are required in this item under the following conditions:

(a) If the Marine refuses to sign either item 6 or item 14, enter the following remark: "Marine refuses to indicate intentions or to sign item 6 and/or item 14" as applicable.

(b) When the offenses are forwarded to higher authority for disposition, a general or specific recommendation as to disposition may be entered. Examples:

General Recommendation - "Fwd to BnCO recom NJP."

Specific Recommendation - "Fwd to BnCO recom red."

(c) Enter any subsequent vacation of any suspended punishment included in item 9 and the date of vacation. Examples:

Forf of \$250 per mo for 1 mo imposed and susp on 10 Dec 98 vacated - 26 Dec 98.

Red to PFC, E-2, imposed on 10 Dec 98 and susp on 15 Dec 98 vacated - 26 Dec 98.

(d) A Marine who has appealed may be required to undergo any punishment imposed while the appeal is pending, except that if action is not taken on the appeal within 5 days after the appeal was submitted, and if the Marine so requests, any unexecuted punishment involving restraint or extra duty shall be stayed until action on the appeal is taken. (See paragraph 7 of Part V, MCM, 1998.) An entry reflecting the stay of punishment will be made. Example:

7 Dec 98: Appeal submitted. Punishment of (here insert punishment) stayed.

(e) When an executed or unexecuted punishment is set aside. This entry will be placed on the old UPB and the new UPB. If the old UPB is not held at the command, then enter on the new UPB only. Example:

7 Dec 98: Red to Cpl, E-4, is set aside. All rights, privileges and property affected will be restored.

(2) In addition to the aforementioned required entries, this item may be used to record other appropriate remarks or information.

s. Item 19: Upon completion of the required administrative action, the officer responsible for the action will initial this item. This item must be initialed by the commanding officer, officer in charge, or by an officer designated to sign "by direction" of the commander. Ensure completion of all SRB and unit diary entries.

6. The officer imposing NJP will prepare, or cause to be prepared, a summary transcript of the proceedings. This may be accomplished by using the form prescribed in Appendix A-1-e, JAGMAN, or a locally prepared form. If local forms are used, sufficient information will be recorded to provide a clear and accurate picture of what transpired at the proceedings. This summary will be appended to the UPB form.

7. When an appeal from NJP is forwarded to higher authority for decision, comply with JAGMAN sections 0116 and 0117 and, additionally, forward the SRB (if available), the original UPB form, the summarization of proceedings, and all allied papers. After action on the appeal, the original of the appeal and all allied papers will be returned to the officer originating the UPB. Allied papers may include, but are not limited to, statements, investigation reports, documents, records, or photographs. A copy of the appeal will be provided to the Marine concerned. Item 17 will be completed and the original appeal with all enclosures and endorsements will be attached to the UPB form. Any allied papers will be filed in the command correspondence files in accordance with current directives. Factual disputes should be addressed by endorsers and resolved by the appeal authority.

8. NJP proceedings are considered complete and final when the appeal period has expired, or at the time the Marine is notified of the decision on an appeal. Once final, an appeal which has been granted may not be reconsidered and denied.

9. For each case involving an unsuspended reduction, copies of the UPB will be forwarded to CMC (MMSB) and delivered to the Marine once proceedings are complete and final.

10. A Unit Punishment Book binder shall be maintained for each organization where the commanding officer or officer in charge imposes NJP under Article 15, UCMJ. Those organizations using consolidated administration (e.g., a battalion) may maintain a single unit punishment book binder. Each Article 15, UCMJ, jurisdiction should be maintained separately by means of dividers (e.g., battalion, Co A, Co B).

a. The UPB binder will consist of UPB forms including attached pages, appeals, and summary transcripts of the impartial hearings filed alphabetically in a loose leaf binder.

b. A new Unit Punishment Book binder shall be opened at the beginning of each calendar year.

c. When no punishment is imposed, or all offenses are referred to trial by court-martial or resolved by administrative corrective action other than NJP, the UPB form will not be maintained in the UPB binder.

d. Duplicate UPB forms will be prepared and maintained per paragraph 3006.3. However, *copies* of UPB forms forwarded to a higher level in the chain of command for disposition will not be maintained in the UPB binder.

e. The old UPB binder will be retained in the organization for 2 full calendar years as required by disposal instructions. (See SECNAVINST 5212.5D.)

3007. VACATION OF SUSPENSION. A suspended NJP may be vacated by any commander authorized to impose upon the accused punishment of the kind and amount to be vacated. Vacation of suspension may only be based on an offense under the UCMJ committed during the period of suspension. Before a suspension may be vacated, the accused ordinarily shall be notified and given an opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment suspended is of the kind set forth in Article 15(e)(1)-(6), UCMJ, the accused should, unless impracticable, be given an opportunity to appear before the commander contemplating the vacation to present any matters in defense, extenuation or mitigation of the offense on which the vacation action is based. Vacation of suspension of NJP is not itself NJP, and additional action to impose NJP for the offense(s) upon which

the vacation action is based is authorized. If only suspended punishment is vacated, an accused has no right of appeal. If additional punishment is imposed, the right to appeal applies. Commanders will prepare, or cause to be prepared, a summary transcript of vacation proceedings involving punishment of the kind set forth above. The summary transcript will include the following information:

a. A statement that the accused was informed of the vacation hearing and (was/was not) permitted to appear before the commander;

b. A description of the suspected offense warranting the vacation of suspended punishment; and

c. A statement that punishment for the additional offense (is/is not) contemplated.

3008. JUDGE ADVOCATE REVIEW. Before acting on an appeal of certain NJP punishments, the appeal authority must refer the case to a judge advocate for consideration and advice. See Article 15(e), UCMJ. This referral should involve full documentary review.