

§946 Commander's Nonjudicial Discipline

(a) Under such regulations as prescribed, any commanding officer (and for purposes of this article, officers-in-charge) may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this article. The Adjutant General, or an officer of a general or flag rank in command may delegate the powers under this article to a principal assistant who is a member of the state military forces.

(b) Any commanding officer may impose upon enlisted members of the officer's command -

(1) an admonition;

(2) a reprimand;

(3) the forfeiture of pay of not more than seven (7) days' pay for those individuals who are serving on full-time military orders in excess of 179 days; for all others will be no more than four (4) days' pay;

(5) a fine of not more than seven (7) days' pay;

(6) a reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(7) extra duties for not more than fourteen (14) days, which need not be consecutive; and

(8) restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive.

(c) Any commanding officer of the grade of major or above may impose upon enlisted members of the officer's command -

(1) any discipline authorized in subsections (b)(1), (2), and (3);

(2) the forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months for those individuals who are serving on full-time military orders in excess of 179 days; for all others no more than fourteen (14) days pay;

(3) a fine of not more than one (1) month's pay;

(4) a reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

(5) extra duties for not more than forty-five (45) days which need not be consecutive for those individuals who are serving on full-time military orders in excess of 179 days; for all others no more than fourteen (14) days which need not be consecutive; and

(6) restriction to certain specified limits, with or without suspension from duty, for not more

than sixty (60) days which need not be consecutive.

(d) The Adjutant General, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose -

(1) Upon an officer or warrant officer of the officer's command, any punishment authorized in subsections (c) (1), (2), (3) and (6);

(2) Upon an enlisted member of the officer's command, any punishment listed in subsection (c).

(e) Whenever any of those disciplines are combined to be served consecutively, the total length of the combined discipline cannot exceed the authorized duration of the longest discipline in the combination, and there must be an apportionment of disciplines so that no single discipline in the combination exceeds its authorized length under this article.

(f) The service member will have the right to consult with a judge advocate. ***The service member will have the right to demand a courts martial in lieu of nonjudicial punishment except when notified that restriction, fines, or extra duties will not be imposed as punishment if, after a hearing by the commander or a panel as further described below, the service member is found guilty of any or all of the offense(s) charged.***

(g) The officer who imposes the discipline, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or amount of the discipline and restore all rights, privileges, and property affected. The officer also may -

(1) mitigate reduction in grade to forfeiture of pay; or

(2) mitigate extra duties to restriction;

The mitigated discipline shall not be for a greater period than the discipline mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the discipline mitigated.

(h) A person punished under this article who considers the discipline unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority within fifteen (15) days after the discipline is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the discipline adjudged. The superior authority may exercise the same powers with respect to the discipline imposed as may be exercised under subsection (f) by the officer who imposed the discipline. Before acting on an appeal from a discipline, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice.

(i) The imposition and enforcement of disciplinary discipline under this article for any act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this article; but the fact that a disciplinary discipline has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of discipline to be adjudged in the event of a finding of guilty.

(j) Whenever a discipline of forfeiture of pay is imposed under this article, the forfeiture may apply to pay accruing before, on, or after the date that discipline is imposed.

(k) If the service member elects to have the case heard by a panel under (f) above; the following provisions apply:

(1) The service member has twenty-four (24) hours to notify the offering commander of the election to have the case heard by a panel.

(2) The panel shall consist of three members appointed by commander's next higher authority. The members of the panel will be comprised of officers who are senior to the individual requesting the panel. If it is an enlisted member requesting the panel, there will be at least one enlisted member of the panel but said member must be senior to the enlisted member requesting the panel. The senior member shall be the chairman. The most junior member shall be the recorder and shall record summaries of the proceedings. However, if the nonjudicial discipline is being offered by a general officer, than the panel will consist of three members, appointed by the Adjutant General with the most senior members being the chairman and the most junior member shall be the recorder and shall record the summaries of the proceedings.

(3) The panel acting by majority vote has the same authority and responsibility in conducting the proceeding and disposing of the matter, including imposing nonjudicial discipline, as has a field grade officer pursuant to this section, except as limited by subsection (f) above. The panel shall forward its recommendation for disposition and imposition of discipline, if any, to the appointing authority. The appointing authority shall approve the recommended discipline or any part or amount as he sees fit and may suspend, mitigate or remit as he deems appropriate. The appointing authority may not approve any discipline in excess of that recommended by the panel.

(4) Procedural requirements for a nonjudicial hearing, and disposition thereof, by the panel under this subsection shall in all respects be the same as would otherwise be applicable for disposition by the commanding officer, including, without limitation, the individual's right to counsel, to submit matters in extenuation, mitigation or defense and to call and examine witnesses, to the extent witnesses are reasonably available.

(5) Appeals from the decision of the appointing authority, if adverse to the individual, may be taken directly to the next higher authority to act upon appeal as set forth in this section with respect to nonjudicial discipline appeals generally unless the action is initiated by a general officer than the Adjutant General will have the final decision.

Annotation to Article 15

This provision is derived in large part from section 815, Art. 15, UCMJ but is extensively modified to incorporate practical changes and is patterned after the Proposed State Model Code, (See **32 USC 327: [b. L. 107-314](#)**, div. A, title V, § 512(e), Dec. 2, 2002, **[116 Stat. 2537](#)**, provided that: “(1) The Secretary of Defense shall prepare a model State code of military justice and a model State manual for courts-martial to recommend to the States for use with respect to the National Guard not in Federal service.)

In addition, the election of a hearing is adapted from Connecticut. (See Connecticut Statutes, Title 27, Chapter 507, Section 27-154)