

§ 946. COMMANDING OFFICER NONJUDICIAL DISCIPLINE

(a) A commanding officer (and for purposes of this statute, officers-in-charge) may impose discipline for minor military offenses without the intervention of a court-martial in accordance with any regulations issued under this chapter. ~~The Adjutant General, or an officer of a general or flag rank in command may delegate the powers under this provision to a principle assistant who is a member of the Vermont National Guard~~ ~~A member subject to discipline shall not be entitled to a court-martial for a minor military offense that will not involve a restraint on liberty as a punishment. A member subject to discipline shall have the right to a hearing before a nonjudicial discipline panel.~~

(b) A commanding officer may impose upon enlisted members of the officer's command:

(1) an admonition;

(2) a reprimand;

(3) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of up to seven (7) days of pay and, for all others, up to four (4) days of pay;

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

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

(6) ~~the imposition of~~ extra duties for not more than (14) ~~up to 14~~ fourteen days, which need not be consecutive; and

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

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

(1) any discipline authorized in subdivisions (b)(1), ~~and (2)~~ and (3) of this section;

(2) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of not more than one-half (1/2) of one (1) month's pay per month for up to two (2) months, and, for all others, up to fourteen (14) days of 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 the member is 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; or

(5) for members who are serving on full-time military orders in excess of 179 days, the imposition of extra duties for up to forty-five (45) days which need not be consecutive, and, for all others, the imposition of extra duties for up to fourteen (14) days which need not be consecutive.

(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) Any commanding officer may impose upon officers and warrant officer members of the officer's command disciplines authorized under subdivisions (b)(1) and (2) of this section.~~

~~(de) The Adjutant General or an officer of a general or flag rank in command may impose upon officers and warrant officers:~~

(1) upon an officer or warrant officer of the officer's command, any punishment authorized in subsections (c) (10), (2), (3) and (6) any discipline authorized in subdivisions (b)(1) and (2) of this section; or

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

or members who are serving on full-time military orders in excess of 179 days, the forfeiture of not more than one-half of one month's pay per month for up to two months, and, for all others, up to 14 days of pay.

(e)(f) Whenever any of those imposed disciplines are 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.

(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 discipline except when notified that the 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 servicemen 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 mitigate reduction in grade to forfeiture of pay or mitigate extra duties to restriction.

(h) The mitigated discipline shall not be for a greater period than the original 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 section by the officer who imposed the discipline.

(hi) A person punished under this section ~~who considers the discipline unjust or disproportionate to the offense may, through the proper channel, may~~ 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 (fg) of this section by the officer who imposed the discipline. Before acting on an appeal, the authority may refer the case to a judge advocate for consideration and advice.

(ij) The imposition and enforcement of discipline under this section 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 section. The fact that a 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.

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

(kl)(1) A ~~service member n individual~~ subject to discipline under this section may elect to have his or her case heard before a nonjudicial discipline panel ~~as provided by (f) above~~. The commanding officer shall notify the individual, verbally and in writing, of the following:

(A) the nature of the alleged wrongdoing;

(B) his or her intent to dispose of the matter by nonjudicial discipline; and

(C) other nonjudicial discipline procedural rights set forth by regulation.

(2) The individual shall have 24 hours to make an election for disposition by the panel.

(3) The individual shall have the right to consult with counsel prior to making a decision

(4) The panel shall consist of three members, appointed by the commander's next higher authority. The members of the panel shall be officers who are senior to the individual requesting the panel. If it is an enlisted member requesting the panel, there shall be at least one enlisted member on the panel but the member must be senior to the enlisted member requesting the panel. ~~If the individual requesting the panel is female, at least one member of the panel shall be female.~~ The senior member shall be the chair. 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, the panel shall consist of three members appointed by the Adjutant General with the most senior member being the chair and the most junior member being the recorder, who shall record the summaries of the proceedings.

(4) The panel decision shall be by majority vote. The panel 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 when limited by (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 the appointing authority sees fit and may suspend, mitigate, or remit as he or she deems appropriate. The appointing authority may not approve any discipline in excess of that ~~recommended approved~~ by the panel.

(5) The procedural requirements for a nonjudicial hearing and its disposition by the panel shall be the same as would otherwise be applicable for disposition by the commanding officer, including 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.

(6) Appeals from the decision of the appointing authority 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, in which case the Adjutant General shall have the final decision.