

CHAPTER 7

NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

7-1. **APPLICABLE POLICIES.** Commanders may find that administrative disciplinary measures are not appropriate or adequate to deal with certain misconduct. If that is the case, nonjudicial punishment imposed under the provisions of Article 15, UCMJ, should be considered. Nonjudicial punishment may be imposed in appropriate cases to:

a. Correct, educate, and reform offenders who have shown that they cannot benefit by less stringent measures;

b. preserve, in appropriate cases, an offender's record of service from unnecessary stigmatization by a record of court-martial conviction; and

c. further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

7-2. **IMPOSITION AUTHORITY.**

a. Who may impose Article 15 punishment? Only a commander may impose punishment under Article 15, UCMJ. A commander, for Article 15 purposes, means a commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area, which under pertinent official directives, is recognized as a command. Commands include companies, troops, batteries, numbered units (i.e., battalions, brigades, etc.), and detachments. Commands also include other organizations, such as provisional units designated under AR 220-5, Designations, Classification, and Change in Status of Units, the commander of which is the one looked to by superior authority as the individual chiefly responsible for maintaining discipline in that organization. The authority to administer nonjudicial punishment may not be delegated except by the GCMCA.

(1) If an officer satisfies the definition of the term "commander," he ordinarily has Article 15 powers. However, a superior officer in the chain of command may completely withdraw or partially limit a subordinate's Article 15 authority. The superior may completely withdraw all Article 15 powers from subordinates. The superior may also partially limit the subordinate's power by preventing him from exercising Article 15 powers in a particular case or over particular categories of personnel or offenses. For example, authority to dispose of all incidents of aggravated assaults involving alcohol or drug abuse and all drug related offenses of soldiers in the rank of Staff

Sergeant (SSG) and below, who are assigned or attached to U.S. Army Medical Department Center and School (AMEDDC&S) for the administration of military justice is withheld to the Commander, AMEDDC&S.

(2) If the superior does not formally withdraw or limit the subordinate's jurisdiction, the superior must permit the subordinate to exercise unfettered discretion in the use of his Article 15 powers. The superior may not direct or recommend that the subordinate impose an Article 15 punishment in a particular case. Moreover, the superior may not issue regulations, orders, or "guidelines" directing or suggesting that the subordinate use Article 15 to dispose of certain types of offenses or that the subordinate impose pre-determined types or amounts of punishments for certain types of offenses.

(3) Request to superior to exercise Article 15 jurisdiction. If a commander determines that his 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 subordinate commanders to impose Article 15 punishment has been withheld or limited. In transmitting a case for action by a superior, no recommendation as to 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, including requests to the Commander, USAG, FSH, to impose Article 15 punishment on a commissioned or warrant officer. This form should also be used by RC commanders when requesting that an Article 15 be administered by a higher level of command.

b. Who may receive an Article 15? A commander may impose nonjudicial punishment upon military members of his command. Soldiers are members of a command if they are assigned to the command or affiliated with it by attachment, detail, or otherwise.

(1) If there is any question as to whether an individual is "of the command," written or oral orders which affect the soldier's status should be examined. If the orders indicate that the soldier is (a) attached for rations, quarters, and administration, or (b) attached for administration of military justice, or (c) attached for administration, the individual may normally be considered to be a member of the command for purposes of Article 15.

(2) A soldier can be a member (for the purposes of Article 15) of more than one command. For example, if a soldier, assigned to a unit at FSH, goes on temporary duty (TDY) to

another post, he is, theoretically, a member of both commands for purposes of nonjudicial punishment. However, he could not be punished twice (once by each commander) under Article 15 for the same misconduct.

(3) Reserve component soldiers may receive nonjudicial punishment pursuant to Article 15 while serving on active duty, ADT, AT, or IDT. Reserve component soldiers may be punished while serving on IDT provided that the proceedings are conducted and any punishment administered is served during normal IDT periods. Prior to taking such actions, RC commanders should consult with their supporting RC or AC staff or command judge advocate. Either RC or AC commanders may punish RC, active duty component or active reserve component enlisted soldiers of their commands. (Unless further restricted by higher authority, punishment for RC officers is reserved to the AC or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or by CGs in the RC officer's chain of command).

c. When is Article 15 punishment appropriate? In order for a commander to impose punishment under Article 15, two criteria must exist. First, the soldier to be punished must have committed an offense in violation of the UCMJ. Secondly, the crime must be of a minor nature for nonjudicial punishment to be appropriate. The term "minor" ordinarily does not include misconduct which, if tried by GCM, could be punished by dishonorable discharge or confinement for more than one year. This is not a hard and fast rule, and the circumstances surrounding the offense must be considered. Summarized Articles 15 should be imposed for only the most minor of offenses, as discussed in paragraph 7-6.

d. Article 15 normally bars future trial. The imposition of punishment under Article 15 will normally bar a subsequent trial by court-martial for the same offense. If the Article 15 punishment was inappropriate because the offense was not minor, however, the accused may be tried by court-martial later for the same offense.

**7-3. FORMAL ARTICLE 15 PROCEDURES.** When administering an Article 15, a commander should use the guide provided in appendix B, AR 27-10. It is the responsibility of the commander to notify the accused of the nature of the alleged misconduct in the form of a concise statement of the offense. The statement must clearly state a violation or violations of one or more of the punitive articles of the UCMJ, and must be in terms which the accused can understand. A DA Form 2627, Record of Proceedings Under Article 15, UCMJ, is required when administering a formal Article 15.

a. Notice to the soldier. The commander informs the accused (1) that he is considering punishing the accused under Article 15; (2) of the accused's rights under Article 31(b), UCMJ; (3) of his right to examine available evidence; (4) of his right to consult with a lawyer; (5) of his right to demand trial by court-martial; (6) of his right to present witnesses or submit evidence in defense, extenuation, or mitigation; (7) of his right to be accompanied by a personal representative during the Article 15 proceedings, (8) of the maximum punishment imposed under Article 15, and (9) of his right to request that the Article 15 proceeding be opened to the public. Before deciding whether to demand trial, the soldier is not entitled to be informed of the type or amount of punishment he will receive if nonjudicial punishment is ultimately imposed. The soldier will be informed of the maximum punishment that may be imposed under Article 15 and, on his request, of the maximum punishment that can be adjudged by court-martial on conviction of the offense(s) involved.

b. Delegation of notice. A commander does not have to personally advise the soldier of the allegations and his rights. He may authorize a commissioned officer, warrant officer, or NCO in the grade of E-7 or above to deliver the DA Form 2627, and inform the soldier of his rights, as long as the person to whom the commander has delegated this task is senior to the soldier receiving the Article 15. An NCO performing the notification should ordinarily be the unit 1SG, or the senior NCO of the command. In cases where this notice procedure is delegated, the person advising the soldier of his rights should use the Article 15 Guide in appendix B, AR 27-10, with modification of the language where appropriate. If this delegation is used, the commander offering the Article 15 signs and dates the signature block of DA Form 2627, not the individual who gives the notice to the soldier.

c. Time to consult with counsel and decide. 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 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 member does not request a delay, the commander may continue with the proceedings immediately. If the soldier requests a delay, he may, but only for good reason, be allowed an additional period to be determined by the imposing commander to decide whether to demand trial.

d. Demand for trial. If the soldier demands trial by court-martial on any offense, no further action will be taken to impose nonjudicial punishment for any offense unless the soldier's demand

is voluntarily withdrawn. Whether court-martial charges will be preferred against the soldier for the offense(s) and the level of court-martial selected will be decided by the appropriate commanders. A soldier's demand for trial by court-martial will not bar disposition of minor offenses by nonpunitive, administrative measures by appropriate commanders. However, before any action is taken against a soldier that demands trial by court-martial, the trial counsel must be consulted.

e. No demand for trial. If trial by court-martial is not demanded, 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 his refusal and punishment is imposed, in addition to recording the punishment, the following entry will be made in item 4 of the DA Form 2627, Article 15 Form.

"Advised of (his) (her) rights, the member (did not demand trial during the decision period), "or" (refused to [complete] [sign] item 3)."

f. The hearing. At the hearing conducted by 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, e.g., 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 is entitled to appear before the officer designated to conduct the hearing.

g. Open hearing. Article 15 proceedings are not adversary in nature, and a soldier may request an open hearing. The imposing commander will, after considering the facts and circumstances, determine whether the hearing will be open or closed. 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 he conducts normal business, e.g., his office. A closed hearing does not prohibit the commander from requiring the NCO chain or other persons to attend the hearing.

h. Spokesperson. The spokesperson who may accompany the member to the Article 15 proceeding and who speaks on his behalf

is normally not a lawyer. A soldier has no right to free military legal counsel at the Article 15 hearing. He may retain civilian counsel to act as his 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. Normally, the lawyer for the command or trial counsel should not be present during the Article 15 proceeding. If the lawyer for the command is present, then the defense counsel advising the accused must be invited to attend the Article 15 proceeding. The spokesperson's presence must be voluntary. Because the proceedings are not adversary in nature, neither the soldier nor spokesperson (including any attorney present on behalf of the soldier) may not examine or cross-examine witnesses, unless permitted by the commander. The soldier or spokesperson may, however, indicate to the commander relevant issues or questions they wish explored or asked.

i. Witnesses. A soldier's request for witnesses in defense, extenuation, or mitigation is 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 and determination of guilt or innocence. The imposing commander is not bound by the formal rules of evidence used in courts-martial and may consider any matter, including unsworn statements, he reasonably believes to be relevant to the offense. If, after evaluation of 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. If the imposing commander is convinced beyond a reasonable doubt that the soldier committed the offense(s), and decides to impose punishment, the soldier should be given the opportunity to present any other evidence in extenuation or mitigation. Thereafter, the commander will ordinarily announce the punishment to the soldier immediately (see paragraph 7-4, below). The commander may, if he desires, explain to the soldier why a particular punishment was imposed. The appellate rights and procedures, which are available to the soldier, will be explained to the soldier in accordance with the Article 15 Guide in appendix B, AR 27-10.

**7-4. ARTICLE 15 PUNISHMENTS.** Table 3-1, AR 27-10 (Page 20 in the 1996 edition), outlines the maximum punishments that may be imposed.

a. Types of punishment. The types of punishment which can be imposed under Article 15 are broken down into three general types. A commander may affect a soldier's pay, rank, and liberty. The punishments within one category may be combined with the punishments of another category. There is nothing wrong with combining punishments so that an individual is reduced from Specialist (E-4) to Private First Class (E-3), given a forfeiture of pay, extra duty and restriction. At FSH, correctional custody is not available as a punishment.

b. Forfeitures based upon grade. If a soldier is reduced and given a forfeiture, the forfeiture must be based on the pay grade to which the soldier was reduced, whether or not the reduction is suspended.

c. Deprivation of liberty. A commander may combine restriction and extra duties, but this combination may not run for longer than the maximum period for extra duties.

d. Effective date of punishments. Punishments are effective on the date they are imposed, unless otherwise indicated on the Article 15 form. For example, if the unit is about to go to the field for a week, the commander could indicate that a punishment of restriction and extra duty would begin on the date (be specific: e.g., 19 March 19xx) after the unit returns from the field. Once punishment of extra duty or restriction starts, it continues until completed, except where temporarily interrupted due to the fault of the soldier, or the soldier is physically incapacitated, or the appeal is not acted on in a timely fashion. See paragraph 3-19b(8), AR 27-10.

e. Interruption of punishment pending appeal. Punishments of restriction, and extra duty will be interrupted (i.e. stopped) if a soldier appeals an Article 15, and the appeal is not acted on within five days by the next superior authority (three days for a summarized Article 15), and the soldier requests that the punishments be stopped. If he does, they must be stopped until the appeal is decided by the appellate authority.

f. Suspension of punishments. A commander may suspend the unexecuted portion of any punishment which he imposes under Article 15, at the time he imposes the punishment or at a later time. A suspension is a probationary period permitting the soldier to exhibit signs of rehabilitation without actually going through the punishment. A punishment may be suspended for a reasonable time not to exceed six months. Army regulations permit a forfeiture or reduction in grade, which is executed when imposed, to be suspended at anytime within four months after it has been imposed. For example, if a soldier is reduced from a Private First Class (E-3) to Private (E-2) on 14 January, and he

performs well after his Article 15, his reduction may be suspended anytime prior to 14 May.

g. Supplementary actions. A commander imposing punishments under Article 15 has power to take supplementary actions: suspension, vacation, remission, mitigation, and setting aside of punishments. This is done on DA Form 2627-2, Record of Supplementary Action Under Article 15, UCMJ, unless the suspension is noted directly on the Article 15 form itself at the time the punishment was originally imposed.

h. Inactive duty of training punishments. The execution of punishment for United States Army Reserve (USAR) soldiers and Army National Guard soldiers in federal service during IDT is limited to normal training periods. Forfeitures for such soldiers will be calculated in whole dollar amounts based upon the base pay for an AC soldier of the same grade, and time in service, and not on the amount of drill pay the soldier may have earned during the period of the forfeiture.

#### 7-5. APPEALS

a. Procedure. Every soldier who receives an Article 15 has the right to appeal both the imposition of the Article 15 and the punishment. That is, he can appeal either on the ground that he is not guilty of the offense(s), that the commander who imposed the punishment did not comply with the prescribed procedures, or that the punishment is too severe. This appeal goes through the imposing commander to the next superior authority (normally the next higher commander in the chain of command). The accused is entitled to submit written statements dealing with the question of guilt, as well as the appropriateness of the punishment. These written statements accompany the appeal when it is forwarded. Where the soldier indicates a desire to appeal, but submits no matters in conjunction with it, the appeal should be forwarded in the same manner as an appeal based on written grounds.

b. Time to submit appeals. Appeals must be submitted by the accused within a reasonable time after the imposition of punishment. Absent any unusual circumstances, five days is considered a reasonable time. However, appeals should not be dismissed solely because they are filed after the five-day period expires. As a result of the appeal, the commander who imposed the punishment may take additional action such as suspension, mitigation, remission or setting aside. If such additional action is taken, the commander should then ask the accused if he wishes voluntarily to withdraw his appeal. If the soldier does not agree to do so, or if the officer takes none of the actions mentioned above, the appeal should be forwarded to the next superior authority.

c. Stopping punishment pending appeal. A soldier who appeals in a timely fashion may be required to undergo any punishment imposed while the appeal is pending, except that if action is not taken on the appeal within five days (three days for summarized Article 15's) after the appeal is submitted, and if the soldier so requests, any unexecuted punishment involving restraint or extra duty is stopped until action on the appeal is taken.

d. Review by Judge Advocate. An appeal from punishments shown below must be referred to a judge advocate for advice before acting on the appeal. The trial counsel servicing the jurisdiction is usually the one who reviews such cases. The specified punishments are:

- (1) Arrest in quarters for more than seven days;
- (2) forfeiture of more than seven days' pay;
- (3) reduction of one or more pay grades from the fourth or a higher pay grade;
- (4) extra duties for more than 14 days; or
- (5) restriction for more than 14 days.

#### 7-6. SUMMARIZED ARTICLE 15.

a. A summarized Article 15 may be imposed by any commander who may impose a formal Article 15. It should be used only for very minor offenses, and when the commander has determined that any punishment imposed should not exceed 14 days extra duty, 14 days restriction, an oral admonition or reprimand, or any combination of these punishments.

b. A soldier has the same rights under the summarized procedure that he does under the formal procedure, except he does not have a right to consult with legal counsel provided by the government before deciding whether to accept the Article 15, and he normally must decide whether to accept the Article 15 or demand trial by court-martial within 24 hours. Summarized Articles 15 are administered using DA Form 2627-1, Summarized Record of Proceedings Under Article 15, UCMJ, and are usually handwritten.

c. A soldier may appeal a Summarized Article 15 in the same manner as a formal Article 15 (see paragraph 7-5 above). The appeal should be submitted within five days of the imposition of punishment. Punishments of extra duty and restriction must be stopped, if the soldier appeals, and requests that they be stopped

if the appeal is not acted on within three days by the next superior authority.

d. A copy of the summarized Article 15 must be provided to the unit legal specialist to ensure proper documentation on the monthly JAG-2 Report.

**7-7. FILING OF ARTICLE 15.**

a. Formal Articles 15. The imposing commander decides whether a formal Article 15 will be filed in the restricted fiche or the performance fiche of a soldier's official military personnel file (OMPF), by initialing the appropriate block in paragraph 5 on the Article 15 form. This decision may not be reversed by a local appellate authority without vacating the entire Article 15.

(1) The OMPF performance fiche is routinely used by military occupational specialty (MOS) career managers and Department of the Army (DA) selection boards for the purpose of assignment, promotion, and schooling selection. The restricted fiche is not given to those managers or DA selection boards without the approval of the Commander, U.S. Total Army Personnel Command (PERSCOM) or selection board proponent. Consequently, the filing decision can have a significant effect on a soldier's future in the Armed Forces.

(2) When the commander directs filing in the performance fiche, a copy will also be filed in the soldier's Unit Information File. If filed in the restricted fiche, a copy will be filed in unit personnel files for up to two years or until the soldier is transferred from the unit, whichever occurs first.

(3) For soldiers Specialist (E-4) and below (prior to punishment) who have been in the Army less than three years as of the date punishment is imposed, the original will be filed in the unit nonjudicial punishment files. Such locally filed originals will be destroyed at the end of two years from the date of imposition of punishment or on the soldier's transfer from the unit, whichever occurs first. For these soldiers, the imposing commander should annotate item 5 of DA Form 2627 as "Not Applicable" (N/A).

b. Summarized Article 15. These are filed in unit personnel files for up to two years or until the soldier is transferred from the unit, whichever occurs first.

**7-8. RESERVE CONSIDERATIONS.** There are some special limitations on the administration of Article 15 punishment in the RCs. Active

Guard Reserves (AGR) soldiers SSG through Sergeant Major (SGM) may not be reduced in grade under this provision. Additionally, Troop Program Unit (TPU), Individual Mobilization Augmentee (IMA), Individual Ready Reserve (IRR) and Standby Reserve Soldiers, Sergeant First Class (SFC) through SGM may not be reduced in grade under provisions of paragraph 7-9, AR 140-158, Enlisted Personnel Classification, Promotion and Reduction.

**7-9. SUMMARY OF PROCEDURES AND PUNISHMENTS.** The following chart summarizes key information contained in this chapter that commanders should know about the imposition of Article 15 punishment. The maximum punishments listed for various levels of command and types of Articles 15 are provided in Table 3-1, AR 27-10 (page 20 in the 1996 edition of the regulation).

**WHO IMPOSES:** Any commanding officer, including a warrant officer who has the power to impose appropriate punishment.

**UPON WHOM:** Any soldier of his command who does not demand trial by court-martial. Summarized Article 15 - enlisted only. Other limits, e.g., Commander, AMEDDC&S and FSH imposes punishment on all officers and soldiers SFC and above assigned or attached to AMEDDC&S or USAG.

**HOW IMPOSED:** In writing (using DA Form 2627 or 2627-1

*INFORM THE OFFENDER OF HIS RIGHTS CONCERNING THE PROPOSED DISCIPLINARY ACTION ACCORDING TO FIGURE 7-2, APPENDIX C (ARTICLE 15 GUIDE).*

*GIVE THE OFFENDER A REASONABLE TIME TO MAKE UP HIS MIND AND REPLY.*

- IF COURT-MARTIAL IS NOT DEMANDED:**
1. After consideration of evidence determine whether the allegation(s) should be dismissed, or
  2. If Article 15 punishment is warranted, personally advise the offender:
    - a. Of the exact punishment imposed; and
    - b. Of his right to appeal in writing to the next superior authority.
  3. Make filing determination in formal Article 15 (performance or restricted fiche of OMPF for Sergeant (SGT) and above).
- AFTER IMPOSING PUNISHMENT:**
1. In the case of officers, warrant officers and enlisted soldiers, DA Form 2627 relating to the imposition of

punishment will be disposed of under the provisions of paragraph 3-37, AR 27-10, and FSH Suppl 1 to AR 27-10.

2. Process any appeal that is made stating the execution of any deprivation of liberty which was imposed if a soldier requests and if action on the appeal is not taken within five days (three days for summarized Article 15).
3. Enforce, suspend, vacate, mitigate, remit, or set aside the punishment (paragraphs 3-23 to 3-28, AR 27-10).

CHAPTER 8  
RESERVE COMPONENT (RC) JURISDICTION.

**8-1. INTRODUCTION.** This chapter prescribes policies and procedures for implementing RC jurisdiction as required by the Military Justice Amendments of 1986. (Articles 2(a) (3), 2(d), 3(d), 136, and 137, UCMJ). This legislation significantly enlarges the powers of RC commanders and the responsibilities of RC judge advocates.

**8-2. POLICY.**

a. United States Army Reserve soldiers will be subject to the UCMJ whenever they are in a Title 10 United States Code (U.S.C.) duty status. Examples of such duty status are: Active duty, ADT; AT; IDT. Inactive duty training normally consists of weekend drills by troop program units, but may also include any training authorized by appropriate authority. For examples of IDT, see paragraph 3-4 (Unit Training Assemblies), 3-11 (Equivalent Training), 3-12 (Rescheduled Training), 3-14 (Additional Training Assemblies), 3-14.1 (Readiness Management Assemblies), and 3-30 (Individual IDT), AR 140-1, Mission, Organization and Training. Jurisdiction continues during periods such as "lunch breaks" between unit training assemblies or drills on the same day and may continue overnight in some situations.

b. Reserve component commanders must be in a Title 10 duty status (see above) whenever they take UCMJ action to include imposition of Article 15 or preferral of court-martial charges. However, RC commanders may forward charges (See RCM 401c(2)) or act on Article 15 appeals any time, even when not in a Title 10 status.

c. Summary court officers, Article 32 investigating officers and legal specialists recording any form of court or an Article 32 investigation must be in a Title 10 status at the time of the actual court or hearing.

d. Costs associated with disciplining RC soldiers will be paid out of RC funds.

**8-3. INVOLUNTARY ACTIVE DUTY AND PRETRIAL CONFINEMENT (Article 2(d), UCMJ).**

a. Reserve component soldiers who are not serving on active duty, and who are the subject of proceedings under Article 15 and 30, UCMJ, for offenses committed while in a Title 10 duty status

may be ordered to active duty involuntarily by the AC GCMCA i.e., Commander, USAG, FSH) for purposes of:

Investigation pursuant to Article 32, UCMJ

trial by court-martial; or

Article 15, UCMJ, proceedings.

b. Involuntary active duty is authorized for any of the purposes set out in (1) - (3) above, but is not authorized for the sole purpose of placing a RC soldier in pretrial confinement. After involuntary activation, a RC soldier may be confined or deprived of liberty in accordance with RCM 304 and 305 with the approval of the Secretary of the Army or his designee.

c. Only the Commander, USAG, FSH, is authorized to order involuntary active duty of RC soldiers for the purposes in paragraph 8-3a. The Secretary of the Army, or the Secretary's designated representative, must approve any involuntary active duty order before a RC soldier may be confined or deprived of liberty during an other than normal IDT or active duty period (See discussion, RCM 204(b)(2)).

(1) Requests to place a RC soldier on involuntary active duty will be forwarded through command channels to the appropriate RSC commander. Requests should include a copy of the charge sheet and a summary of the evidence supporting the charges. Prior to preferral of charges in such cases, commanders will consult with supporting RC and AC SJA personnel.

(2) Regional Support Commanders will forward requests for involuntary active duty to the Commander, USAG, FSH, ATTN: MCGA-JA-CL.

(3) The Commander, USAG, FSH, will forward requests for Secretary of the Army approval of involuntary active duty to HQDA (DAJA-CL) for processing to obtain Secretary of the Army or Secretary designee approval. The Commander, USAG, FSH, will also immediately inform the RSC and Continental U.S. Army (CONUSA) commanders and the U.S. Forces Command (FORSCOM) commander, of the initiation of UCMJ actions against RC soldiers. The HQDA (DAJA-CL) will notify the Commander, USAG, FSH, Secretary or Secretary designee of action on the request.

d. Reserve component soldiers must be on active duty prior to arraignment at a GCM or SPCM (RCM. 204(b)(1)) or prior to being placed in pretrial confinement (RCM 305).

8-4. EXTENDING RC SOLDIERS ON ACTIVE DUTY.

a. The requirements for AC GCMCA activation and/or Secretarial approval in paragraph 8-3 do not apply to RC soldiers on active duty. Reserve component soldiers serving in active duty, ADT, or AT in a Title 10 duty status may be extended on active duty involuntarily, so long as action with a view toward prosecution is taken before the expiration of the active duty, ADT, or AT period. See paragraph 1-24, AR 635-200. Any such extensions must be completed pursuant to the provisions of chapter 8, AR 135-200.

b. A RC soldier who is suspected of or accused of an additional offense after being ordered to active duty for any of the purposes in paragraph 8-3a above may be retained on active duty pursuant to RCM 202(c)(1).

8-5. PRESERVATION OF JURISDICTION AND PUNISHMENT (ARTICLE 3(d), UCMJ).

a. Reserve component soldiers remain subject to UCMJ jurisdiction for offenses committed while serving in a Title 10 duty status notwithstanding termination of a period of such duty, provided they have not been discharged from all further military service (RCM 204(d)).

b. All lawful punishments remaining unserved when RC soldiers are released from active duty, ADT, AT, or IDT, including any uncollected forfeitures of pay, are carried over to subsequent periods of active duty, ADT, AT, or IDT. However, a RC soldier may not be held beyond the end of a normal period of IDT for trial, or service of any punishment, nor scheduled solely for the purpose of UCMJ action (RCM 204(b)(2)).

NONJUDICIAL PUNISHMENT (ARTICLE 15)

a. The provisions of chapter 7 are applicable to the administration of nonjudicial punishment in the RC. In particular, commanders are reminded of the policy in paragraph 3-2 that nonpunitive or administrative remedies should be exhausted before resorting to nonjudicial punishment.

b. Reserve component soldiers may receive nonjudicial punishment pursuant to Article 15, UCMJ, while serving in a Title 10 status on active duty, ADT, AT, or IDT. Reserve component soldiers may be punished pursuant to Article 15 while serving on IDT provided that the proceedings are conducted and any punishment

administered is served during normal IDT periods (see Discussion RCM 204(b)(2)). Prior to taking such actions, RC commanders should consult with their supporting RC or AC SJA.

c. Either RC or active duty commanders may impose Article 15 punishment on reserve enlisted soldiers of their command.

d. Unless further restricted by higher authority, punishment for RC officers is reserved to the AC or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or by commanding generals in the RC officer's chain of command.

#### SUMMARY COURT-MARTIAL (SCM).

a. Reserve component soldiers may be tried by SCM while serving in a Title 10 status on active duty, ADT, AT, or IDT. Reserve component soldiers may be tried by SCM while serving on IDT provided that the trial is conducted and punishment is served during normal IDT periods (see discussion, RCM 204(b)(2)).

b. Either an RC or AC SCM may refer charges against RC soldiers to trial by SCM. A RC SPCMCA may refer charges to SCM while on IDT; however, Article 25, UCMJ, requires that the summary court officer must be on active duty at the time of trial.

c. Regional support commanders may attach all soldiers without an intermediate commander authorized Article 15 authority or SCM authority under Articles 15 and 24, UCMJ, to an appropriate subordinate commander for such purposes.

#### SPECIAL (SPCM) AND GENERAL COURT-MARTIAL (GCM).

a. Reserve component soldiers may be tried by SPCM or GCM only while serving on active duty. The Commander, USAG, FSH, must order the RC soldier to active duty before he can be tried. Orders to involuntary active duty must be approved by the Secretary of the Army, or the Secretary's designee, before a RC soldier may be confined or deprived of liberty.

b. Only the Commander, USAG, FSH, may refer charges against a RC soldier to a SPCM or GCM. The court-martial will normally be conducted at FSH; however, a RC soldier may be attached to an active duty installation nearest to his unit (i.e., Fort Bliss, Fort Hood, Fort Sill) for trial.

**8-9. FORFEITURES.** Forfeitures imposed upon RC soldiers pursuant to Article 15 or court-martial action will be calculated in whole dollar amounts based on the drill pay of the soldier.

**CHAPTER 9  
COUNSELING AND REHABILITATIVE TRANSFER.**

**9-1. INTRODUCTION.** A soldier who engages in minor acts of misconduct often does so as a result of simple neglect, ignorance, sloppy habits, or other similar reasons. The administrative measures described in this section provide excellent tools for the commander's use to teach and train the potentially good soldier who fails to comply with prescribed standards. Use of these options may teach the soldier the error of his ways without inflicting a penalty that the soldier may never be able to overcome. The goal in using these measures is the soldier's readjustment and improvement so that he becomes a productive member of his unit.

**9-2. COUNSELING.**

a. Counseling should be done at the lowest possible level in the chain of command. It consists of advising the soldier of his strengths and weaknesses, paying particular attention to how to exploit his strengths and improve on his weaknesses. Soldiers should be counseled often on their performance. It is the commander's obligation to keep in close touch with soldiers in his command, take an interest in their organizational life, hear their complaints, and work at all times to remove causes for dissatisfaction. When counseling becomes necessary because of unsatisfactory performance or conduct, an effort must be made by the counselor to learn what provoked the undesirable conduct, why the soldier failed to maintain the required standards, or the reasons behind a deficient or unresponsive attitude.

b. Counseling may be written or oral. Oral counseling is usually the most effective teaching tool. The goal of oral counseling should be to arouse in the soldier the desire to be a better soldier, and demonstrate the advantages of proper conduct. A good rule of thumb is that the chain of command should be initiating at least half of their counseling or coaching sessions based on high performance, thereby reinforcing desired behavior.

**9-3. MANDATORY COUNSELING PRIOR TO INITIATION OF SEPARATION.**

Written counseling is appropriate when future reference may be needed for awards, promotion, or adverse personnel actions. When a soldier's conduct or performance reaches a point where a continuation of such conduct would warrant initiation of separation action for involuntary separation due to parenthood, personality disorder, entry level performance, conduct, unsatisfactory performance, minor disciplinary infractions, or a pattern of misconduct, paragraph 1-18, AR 635-200, requires that the soldier receive formal written counseling at least once prior

to initiation of these separation actions. The counseling must be comprehensive, and at a minimum, contain the following:

- a. Reason for counseling, or
- b. a warning that separation action may be initiated if the behavior continues, and
- c. the type of discharge that could result from the possible separation action, and the effect of each type of discharge on the soldier's veterans benefits and future civilian employment.
- d. Formal counseling should be recorded on a DA Form 4856, General Counseling Form.
- e. Commanders should also ensure a soldier receives formal written counseling IAW paragraph 1-18, AR 635-200, anytime the soldier receives Article 15 nonjudicial punishment, or other punishment under the UCMJ for misconduct, because UCMJ punishment alone does not satisfy the minimum counseling requirements required for many elimination actions.
- f. Contact your supporting trial counsel for a sample statement that would meet these requirements.

**9-4. OPTIONAL COUNSELING PRIOR TO INITIATION OF SEPARATION.** Even in elimination actions where counseling may be waived, elimination boards often consider the command's failure to counsel a problem soldier as a factor in recommending retention or the award of an Honorable or General discharge, rather than an Other than Honorable discharge.

**9-5. REHABILITATIVE TRANSFER.**

a. When a soldier is experiencing problems in a unit, and does not respond to counseling, a transfer is often desirable. A change in commanders, associates, or living and work areas may resolve a soldier's problems. Unless waived by the separation authority, rehabilitative transfer is a prerequisite to initiation of administrative elimination proceedings pursuant to chapter 11 (Entry Level Performance and Conduct), chapter 13 (Unsatisfactory Performance), or chapter 14 (Minor Disciplinary Infractions or a Pattern of Misconduct), AR 635-200.

b. To constitute a rehabilitative transfer, the soldier must be reassigned at least once, with at least two months of duty in the old and new units. Reassignment should be between at least battalion-size units. A permanent change of station transfer may be recommended by the commander, but only as a last resort and

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must be approved by the GCMCA. A soldier in initial entry training should be recycled.

c. Soldiers should be transferred as a corrective measure, not as a method to rid the unit of a problem soldier. Soldiers undergoing special counseling or medical treatment should not be transferred if they are not expected to benefit from the change in environment.

#### 9-6. REFERENCES

- a. AR 350-2, paragraph 5.
- b. AR 600-20, paragraph 4-6.
- c. AR 635-200, paragraphs 1-18 and 1-19.
- d. FM 22-100, Appendix B.
- e. FM 27-1, pages 6-0, 6-2, 6-4, 7-1, and 7-2.