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Law

**NONJUDICIAL PUNISHMENT**

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This instruction implements AFD 51-2, *Administration of Military Justice*, and Article 15, Uniform Code of Military Justice (UCMJ), and it supplements the Manual for Courts-Martial (MCM), United States, Part V. It establishes requirements for imposing nonjudicial punishment (NJP) on members of the Air Force and provides rules and procedures for imposing this punishment regardless of the member's assignment. This instruction applies to all Air Force military personnel, including members of the U.S. Air Force Reserve and the Air National Guard while in Federal service. It requires collection and maintenance of information protected by the Privacy Act of 1974 authorized by 10 U.S.C. § 815. System of records notice F051 AF JA F, *Courts-Martial and Article 15 Records*, applies. Maintain and dispose of records created as a result of processes prescribed in this publication in accordance with AFMAN 37-139, *Records Disposition Schedule*. Only a major command (MAJCOM) or Headquarters of the Air Force Reserve Command (AFRC) are authorized to issue supplements to this instruction upon approval by AFLSA/JAJM. Submit proposed supplements in writing to AFLSA/JAJM, 112 Luke Avenue, Room 343, Bolling AFB, DC 20332-8000, for approval before publication.

**SUMMARY OF CHANGES**

This interim change implements new guidelines regarding public nonjudicial punishment. **Section 3C-Imposing and Administering Punishments.** Paragraph **3.13. Member's Presentation**, now has additional language addressing public nonjudicial punishment (NJP). Further a new paragraph is added to the AFI. Paragraph **3.19. Release of Information** addresses the issue of the public release of information subsequent to punishment. Paragraph **3.19.** now falls under **Section 3C-Imposing and Administering Punishments.** What was formerly paragraphs **3.19., 3.21.** and **3.22.** under **Section 3D- Action When the Member Demands Trial by Court-Martial** are re-numbered to correspond to the addition of the new paragraph **3.19.** Prior paragraphs **3.19. Restrictions., 3.21. Commander's Options.,** and **3.22. Withdrawing Demand for Trial.,** become paragraphs **3.21., 3.22.** and **3.22.**, respectively, with the same headings and remain in **Section 3D.** A bar ( | ) indicates a revision from the previous edition.

**Chapter 1— GENERAL GUIDANCE 6**

1.1. Purpose. .... 6

1.2. Forms. .... 6

1.3. Supervisory Authority. .... 6

1.4. Air Force Academy Cadets. .... 6

1.5. Reporting Senior Officer Cases. .... 6

1.6. Cases Involving State or Foreign Prosecution Interest. .... 6

**Chapter 2— AUTHORITY FOR IMPOSING NONJUDICIAL PUNISHMENT 7**

2.1. Authority of Commanders. .... 7

2.2. Commanders. .... 7

2.3. Members of their Command. .... 8

2.4. Nonjudicial Punishment Authority in a Joint Force. .... 8

2.5. Procedures for Imposing Nonjudicial Punishment in a Joint Force. .... 9

2.6. Procedures for Multiservice Commanders. .... 9

2.7. Delegation of Authority. .... 9

2.8. Commander as Victim. .... 10

2.9. Air Force Cadets. .... 10

2.10. Withholding Authority. .... 10

**Chapter 3— PROCEDURES FOR INITIATING AND IMPOSING NONJUDICIAL PUNISHMENT 11**

**Section 3A—Responsibilities of the Initiating Commander 11**

3.1. General Responsibilities. .... 11

3.2. Notice of Recoupment of Benefits. .... 11

3.3. Timeliness of Actions. .... 11

3.4. Standard of Proof. .... 11

3.5. Providing Evidence to the Member. .... 11

**Section 3B—Initiating Nonjudicial Punishment 12**

3.6. Initial Considerations. .... 12

3.7. Members Attached to the Command. .... 12

3.8. Description of Offense. .... 12

3.9. Notifying the Member. .... 12

3.10. Changing Commanders before Nonjudicial Punishment Proceedings are Complete.	13
3.11. Discovery of Additional Offenses. ....	14
3.12. Member's Decision to Accept or Reject Nonjudicial Punishment. ....	14
3.13. Member's Presentation. ....	15
<b>Section 3C—Imposing and Administering Punishments</b>	<b>15</b>
3.14. Commander's Findings. ....	15
3.15. Commander's Punishments. ....	16
3.16. Maximizing the Impact of Punishment. ....	16
3.17. Permissible Punishments. ....	16
3.18. Punishment Effective Date. ....	16
3.19. Release of Information. ....	17
<b>Section 3D—Action When the Member Demands Trial by Court-Martial</b>	<b>17</b>
3.20. Restrictions. ....	17
3.21. Commander's Options. ....	17
3.22. Withdrawing Demand for Trial. ....	17
Table 3.1. Enlisted Punishments. ....	18
Table 3.2. Officer Punishments. ....	19
<b>Chapter 4—NONJUDICIAL PUNISHMENT APPEALS</b>	<b>20</b>
4.1. General Guidance. ....	20
4.2. Appellate Authority. ....	20
4.3. Format. ....	21
4.4. Delegation of Authority. ....	21
4.5. Procedures for Appeals. ....	21
4.6. Action on Appeal by Imposing Commander. ....	22
4.7. Action on Appeal by Appellate Authority. ....	23
4.8. Officer and Senior Noncommissioned Officer (NCO) Selection Record Determination. ....	23
<b>Chapter 5—SUPPLEMENTARY ACTIONS</b>	<b>24</b>
<b>Section 5A—Suspension, Mitigation, Remission and Set Aside of Punishment</b>	<b>24</b>
5.1. General Guidance. ....	24
5.2. Consultation Required. ....	24

5.3.	Action by Successor in Command. ....	24
5.4.	Suspension. ....	24
5.5.	Mitigation. ....	25
5.6.	Remission. ....	25
5.7.	Set Aside. ....	26
5.8.	Limitations on Suspension, Mitigation, Remission and Set Aside of Punishment. ...	26
5.9.	Processing Requirements. ....	26
Section 5B—Vacation of Suspension		26
5.10.	General Guidance. ....	26
5.11.	Notification to the Member. ....	26
5.12.	Member’s Elections. ....	27
5.13.	Timing. ....	27
5.14.	Commander's Decision. ....	28
5.15.	Effect on Suspended Reductions. ....	28
<b>Chapter 6— MISCELLANEOUS MATTERS</b>		<b>29</b>
Section 6A—Indorsing Forms and Correspondence		29
6.1.	Procedure. ....	29
6.2.	Content of Indorsements: ....	29
6.3.	Copies. ....	29
Section 6B—Action Taken on Records of Punishment, Including Vacation, Suspension, Mitigation and Set Aside Actions		29
6.4.	Action by the Commander. ....	29
6.5.	Action by the Servicing SJA. ....	30
6.6.	Action by the Military Personnel Flight (MPF). ....	31
6.7.	Action by the GCMCA SJA. ....	31
Section 6C—Filing of the Original Record on Nonjudicial Punishment Proceedings		31
6.8.	Procedures. ....	31
Section 6D—Effect of Errors in Nonjudicial Punishment Proceedings		32
6.9.	Effect of Errors. ....	32
Section 6E—Disposition of Records of Nonjudicial Punishment Proceedings		32

<b>AFI51-202 7 NOVEMBER 2003</b>	<b>5</b>
6.10. Governing Directive. ....	32
6.11. Contents of Record. ....	32
6.12. Supporting Documentation. ....	33
Section 6F—Forms	33
6.13. Forms Prescribed: ....	33
6.14. Authority. ....	33
6.15. Host Command Jurisdiction. ....	33
6.16. Exceptions to Support Agreements. ....	34
<b>Attachment 1— GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION</b>	<b>35</b>
<b>Attachment 2— NOTICE OF RECOUPMENT OF BENEFITS</b>	<b>37</b>
<b>Attachment 3— DETERMINING THE “CASE-READY DATE”</b>	<b>38</b>
<b>Attachment 4— SAMPLE FORMAT FOR NOTIFICATION OF CHANGE OF COMMANDER</b>	<b>39</b>
<b>Attachment 5— FORMAT OF NONJUDICIAL PUNISHMENTS</b>	<b>41</b>
<b>Attachment 6— SAMPLE FORMAT FOR REQUEST FOR SUSPENSION, MITIGATION, REMISSION, OR SET ASIDE OF NONJUDICIAL PUNISHMENT</b>	<b>43</b>

## Chapter 1

### GENERAL GUIDANCE

**1.1. Purpose.** Nonjudicial punishment (NJP) provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction. See MCM, Part V, paragraphs 1b, 1c and 1e on the nature of NJP. Commanders should consider, where appropriate, nonpunitive disciplinary measures, such as counseling, administrative reprimands and administrative withholding of privileges before resorting to NJP, but such measures are not necessary before imposing NJP. MCM, Part V, paragraph 1g.

**1.2. Forms.** Use the following forms to record NJP actions: AF Form 3070, **Record of Nonjudicial Punishment Proceedings**; AF Form 366, **Record of Proceedings of Vacation of Suspended Nonjudicial Punishment**; and AF Form 3212, **Record of Supplementary Action under Article 15, UCMJ**.

**1.3. Supervisory Authority.** The officer exercising general court-martial jurisdiction supervises all NJP within the command. See paragraph 6.7.

**1.4. Air Force Academy Cadets.** For purposes of this instruction, the term "officer" includes cadets of the US Air Force Academy (USAFA).

**1.5. Reporting Senior Officer Cases.** Commanders are responsible for reporting NJP actions on colonel selects and above to SAF/IGS (for general officers) or SAF/IGQ (for colonels and colonel selects) when initiated and when final action is complete in accordance with AFI 90-301, *Inspector General Complaints*. The servicing staff judge advocate will provide commanders a copy of the completed AF Form 3070, **Record of Nonjudicial Punishment Proceedings**, with any attachments and supporting documentation, for forwarding to SAF/IGS or SAF/IGQ.

**1.6. Cases Involving State or Foreign Prosecution Interest.** If an act or omission is subject to NJP proceedings and to trial in a state or foreign court, consult AFI 51-201, *Administration of Military Justice*. Only the Secretary of the Air Force may approve initiation of NJP action against a member who has been previously tried by a state or foreign court for the same act or omission, regardless of the outcome.

## Chapter 2

### AUTHORITY FOR IMPOSING NONJUDICIAL PUNISHMENT

**2.1. Authority of Commanders.** Commanders who are commissioned officers may impose NJP on members of their commands for minor offenses. MCM, Part V, paragraphs 1e and 2a.

**2.2. Commanders.** "Commander" means a commissioned officer who, by virtue of rank and assignment, exercises primary command authority over a military organization recognized as a command. (MCM, Part V, paragraph 2a). An Air Force officer who has assumed or been appointed to command of an Air Force organization IAW AFI 51-604, *Appointment to and Assumption of Command*, is a "commander" under this AFI. For purposes of nonjudicial punishment, "commanders" are:

2.2.1. A commander of an Air Force unit, as defined in [Attachment 1](#).

2.2.2. Commander, Air Force Forces (COMAFFOR), which is an officer designated from the U.S. Air Force who serves as the commander of all U.S. Air Force forces assigned and attached to the U.S. Air Force component in a joint or combined operation. COMAFFORs command the U.S. Air Force components of unified commands, subordinate unified commands, joint task forces, combined commands, and combined task forces.

2.2.3. The commander of an Air Force element, if designated to function as a unit pursuant to AFI 38-101, *Air Force Organization*. This includes the Air Force element of a headquarters unit in a joint or combined command or task force as well as the Air Force element of an activity outside the Air Force. See definition of "activity outside the Air Force" in [Attachment 1](#).

2.2.4. Commanders of detachments, headquarters and squadron sections, and Air Force element sections, if properly appointed to command on special orders. See MCM, Part V, paragraph 2; AFI 38-101; and AFI 51-604.

2.2.5. The Senior Air Force Officer (SAFO) in the headquarters staff organization of a unified command, subordinate unified command, joint task force, combined command, or combined task force, with respect to Air Force members in the headquarters staff organization. Also, the SAFO in the Air Force element of an activity outside the Air Force, as defined in [Attachment 1](#), with respect to Air Force members in the activity.

2.2.5.1. The SAFO must be an officer otherwise eligible to command under AFI 51-604.

2.2.5.2. If the Air Force element of the staff organization is designated to function as a unit pursuant to AFI 38-101, the Air Force element commander should exercise NJP authority instead of the SAFO. See paragraph [2.2.3](#). However, the exercise of NJP authority by an Air Force element commander does not divest the SAFO of concurrent authority to exercise NJP authority under paragraph [2.2.5](#).

2.2.6. The commander of the 11th Wing, Bolling AFB, District of Columbia, and the commanders of subordinate units when designated by the commander of the 11th Wing, for Air Force members assigned to the Air Force element of an activity outside the Air Force, as defined in [Attachment 1](#). This NJP authority is held concurrently with element commanders and SAFOs of activities outside the Air Force, as designated in paragraphs [2.2.3](#) and [2.2.5](#), respectively.

2.2.7. The Superintendent of the U.S. Air Force Academy and the commandant of a school which is designated as an Air Force unit.

2.2.8. The commander of a host command, and the commanders of subordinate units when designated by the host commander, providing support to a tenant organization pursuant to AFI 25-201, *Support Agreements Procedures*, Chapter 6.

2.2.9. Joint force commanders of joint activities established under the criteria of Joint Publication 0-2, *Unified Action Armed Forces*, that being unified commands, subordinate unified commands, and joint task forces.

2.2.10. Multiservice commanders in combined commands, combined task forces, and activities outside the Air Force, as defined in **Attachment 1**, to whose command members of the Air Force are assigned or attached. The multiservice commander must be an officer in the U.S. Armed Forces with command authority over the Air Force member.

**2.3. Members of their Command.** As used in this instruction, "members of their command" includes the assigned members of the element or organization commanded and members on temporary duty (TDY) with, or otherwise attached to, the element or organization.

2.3.1. A member need not be attached on TDY orders for the commander to exercise NJP authority if the commander exercises the usual responsibilities of command over the member. A TDY commander has concurrent authority with the commander of the member's element or organization of permanent assignment.

2.3.2. A commander will not impose NJP on a member after that member has been transferred from the command. If an NJP proceeding has been initiated but punishment was not imposed prior to the transfer, the commander who initiated the proceeding may forward the record of proceeding to the gaining commander for appropriate disposition. If a member transfers after punishment has been imposed but before the action is complete, the action (including adjudication of any appeal) will be completed by the imposing commander's chain of command.

**2.4. Nonjudicial Punishment Authority in a Joint Force.** A joint force is composed of significant elements, assigned or attached, of two or more Military Departments operating under a single commander authorized to exercise operational control over the force to accomplish an assigned mission. Joint forces are established at three levels: unified commands, subordinate unified commands, and joint task forces. Joint forces organizationally consist of a joint force commander, a joint staff organization, and Service component commands. See Joint Publication 0-2 and Air Force Doctrine Document 2, *Organization and Employment of Aerospace Power*.

2.4.1. The joint force commander has authority to impose NJP on Air Force members assigned or attached to the command, regardless of the commander's parent service, unless such authority is withheld by a superior joint commander. Air Force members are "assigned or attached to the command" of a joint force commander if they are assigned or attached to the joint staff organization, or assigned or attached to a unit which is assigned or attached to the joint force.

2.4.2. In accordance with Joint Publication 0-2, joint force commanders will use this instruction when imposing NJP on Air Force members; however, joint force commanders should normally allow NJP authority over Air Force members to be exercised by the appropriate Air Force commander. Matters that involve more than one service or that occur outside a military reservation, but within the joint

force commander's jurisdiction, may be handled either by the joint force commander or, unless withheld by the joint force commander, by the appropriate Air Force commander. The appropriate Air Force commander should normally handle matters that involve only the Air Force, and occur on a military reservation or within the military jurisdiction of the Air Force.

**2.5. Procedures for Imposing Nonjudicial Punishment in a Joint Force.** If the joint force commander decides to personally initiate NJP proceedings against an Air Force member, the joint force commander should coordinate with the appropriate Air Force commander before taking action to ensure procedural awareness and compliance.

2.5.1. The appropriate Air Force commander immediately notifies the servicing Air Force staff judge advocate (SJA). See AFI 25-201, *Support Agreements Procedures*. The servicing Air Force SJA:

2.5.1.1. Coordinates with the SJA assigned to the joint force commander.

2.5.1.2. Advises on Air Force policy and NJP procedures, including the application of Air Force regulations in the administration and processing of NJP actions, and assists the joint force SJA in ensuring the NJP action is properly completed by the joint force commander.

2.5.1.3. Enters the NJP proceedings into the Automated Military Justice Analysis and Management System (AMJAMS) and ensures appropriate personnel and finance actions are taken, including the filing of the action in appropriate personnel records as well as Unfavorable Information Files (UIF) and/or selection records. See paragraphs 4.8.1. and 6.4.2.2. to identify the Air Force officer responsible for deciding selection record and UIF actions.

2.5.2. If an Air Force judge advocate is assigned to the joint force commander, he or she may provide advice to the joint force SJA in lieu of the servicing Air Force SJA for the host command. In such cases, however, the servicing Air Force SJA shall be notified of the occasion and nature of the advice and action and shall remain responsible for the required AMJAMS entries and personnel records and finance actions.

2.5.3. If the joint force commander determines NJP authority over an Air Force member should be left to the discretion of Air Force authorities, the appropriate Air Force commander, as identified in paragraph 2.2., may take action. Regardless of who imposes punishment, the action (i.e. AMJAMS, personnel actions, and finance actions) shall be processed through the servicing Air Force SJA for the host command.

**2.6. Procedures for Multiservice Commanders.** The multiservice commander, when imposing NJP on an Air Force member, follows this instruction, including the guidance applicable to joint force commanders in paragraph 2.4.2. and procedures consistent with those in paragraphs 2.5. Before initiating any NJP action, ensure the multiservice commander has command authority over the member involved, the appellate authority is identified (see paragraph 4.2.8.), and administrative processing issues are understood.

**2.7. Delegation of Authority.** Commanders who are general officers or who exercise general court-martial convening authority (GCMCA) may delegate their powers under Article 15 to a principal assistant. The principal assistant then assumes the commander's authority to impose NJP on members of the command who are subordinate to the principal assistant. Principal assistants must be military officers to exercise NJP authority, and may impose only the amount of punishment authorized for their grades (MCM, Part V, paragraph 5b). Delegation of such authority must be in writing or incorporated in a permanent

directive, and should be addressed to the principal assistant by duty title, rather than by name, except as described in paragraph 2.7.2. The original written delegation or directive shall be filed in the office of the SJA servicing the commander concerned. A delegation made by duty title continues in effect when a new principal assistant occupies the position or when command changes to a new commander, unless or until expressly rescinded. A commander delegating nonjudicial punishment authority also retains the authority to administer nonjudicial punishment in the commander's own right.

2.7.1. The commander's principle assistant is the officer who would assume command in the event of the commander's death, prolonged absence, or disability, or to the vice-commander of the organization. See AFI 51-604. However, if that officer is located at another station, the commander may delegate authority to the officer on the commander's station next eligible to assume command.

2.7.2. SAFOs described in paragraph 2.2.5., who are general officers, may delegate their powers under Article 15 to the next senior Air Force officer or another principal assistant who is generally equivalent to a vice commander.

**2.8. Commander as Victim.** If a commander is the victim of a crime in his or her personal capacity (e.g., victim of assault or larceny) as opposed to official capacity (e.g., violation of commander's order), that commander should forward the report of the incident to the next higher commander for review and appropriate action.

**2.9. Air Force Cadets.** Only the Commandant of Cadets, a superior commander at the USAFA, or a commander designated by the Secretary of the Air Force may impose NJP on USAFA cadets.

**2.10. Withholding Authority.** A commander at any echelon may withhold from any subordinate commander all or part of the authority – including the authority to impose NJP for specific types of offenses – that the subordinate would otherwise have under the UCMJ, MCM, or this instruction. When authority is withheld, such action should be in a clearly defined writing or permanent directive. File the original of the letter or directive in the office of the SJA servicing the commander withholding the authority. File a copy in the office of the SJA servicing the commander whose authority has been withheld. Any such withholding remains in effect when a new commander assumes either command, until and unless expressly revoked by the superior commander. Any such action should be addressed by duty title and not by name.

## Chapter 3

### PROCEDURES FOR INITIATING AND IMPOSING NONJUDICIAL PUNISHMENT

#### *Section 3A—Responsibilities of the Initiating Commander*

**3.1. General Responsibilities.** Commanders who initiate NJP action and impose punishment act on the basis of information they determine relevant. See MCM, Part V, paragraph 4c(3), for the limited applicability of the Military Rules of Evidence. The commander's action must be temperate, just, and conducive to good order and discipline. Although it is the SJA's responsibility to advise and help the commander to evaluate the facts and determine what offense was committed, if any, it is the commander who makes the decision to impose punishment and the degree of punishment.

**3.2. Notice of Recoupment of Benefits.** Concurrent with initiation of the NJP action, the initiating commander must provide written notice to a member who has received educational assistance, special pay, or bonuses concerning the member's obligation to reimburse the Air Force if the member is discharged (or involuntarily separated) for misconduct. This notice shall be accomplished in item 3 of the AF Form 3070. The member's signature in item 3 constitutes acknowledgement of this notice. The statement of understanding regarding recoupment is inserted in item 14 as a continuation of item 3. (See [Attachment 2](#) for a sample statement). Noncompliance with this provision shall not affect the legal sufficiency of the NJP action.

**3.3. Timeliness of Actions.** In order to maximize disciplinary and rehabilitative effect, NJP should be offered as soon as possible after facts become known by the member's commander which indicate that offenses may have been committed. Commanders should offer NJP within 10 days of the "Case-Ready" date. The impartial and timely administration of military justice helps sustain good order and discipline. SJAs and chiefs of military justice should regularly analyze the Automated Military Justice Analysis and Management (AMJAMS) data as to each segment of NJP processing they control to determine specific areas for improvement, and implement appropriate management measures to maximize effectiveness and efficiency. However, failure to meet this processing goal shall not preclude a commander from initiating NJP proceedings. The following metrics have been established to assist in expediting the administration of justice.

3.3.1. Offer 90% of all NJP actions within 10 days of the "Case-Ready" date. See [Attachment 3](#) for definition of "Case-Ready" date.

3.3.2. Complete 80% of all NJP actions (Offer Date through Servicing SJA Review Date) within 20 days.

**3.4. Standard of Proof.** While no specific standard of proof applies to NJP proceedings, including appeals, commanders should recognize that a member is entitled to demand trial by court-martial, in which case proof beyond a reasonable doubt of each element of every offense by legal and competent evidence is a prerequisite to conviction. Whether such proof is available should be considered before initiating action under Article 15. If such proof is lacking, NJP action is usually not warranted.

**3.5. Providing Evidence to the Member.** After a commander serves the AF Form 3070 on a member, that member has a right to examine all statements and evidence upon which the commander intends to

rely in arriving at a decision to impose punishment, and as to the quantum of punishment to be imposed, unless the matters are privileged or restricted by law, regulation, or instruction.

### ***Section 3B—Initiating Nonjudicial Punishment***

**3.6. Initial Considerations.** After making a preliminary inquiry, the commander consults with the servicing SJA to determine whether NJP is appropriate under the circumstances and, if so, whether the commander can initiate proceedings personally, or should or must refer the matter to a superior commander for action. Such referral is appropriate when the commander cannot impose an appropriate punishment because of the member's grade, or where authority has been withheld. See [Table 3.1.](#) and [Table 3.2.](#), and paragraph [2.10.](#)

3.6.1. When initiation of NJP action is under consideration, the member's personal data is normally available to the legal office through the Automated Military Justice Analysis and Management System (AMJAMS). The member's personal data is also available by requesting an AMJAMS Report on Individual Personnel (RIP) from the member's orderly room or servicing Military Personnel Flight (MPF). However, don't delay initiation for receipt of an AMJAMS RIP.

**3.7. Members Attached to the Command.** In some cases, commanders initiate NJP proceedings against members who are in their commands by virtue of being TDY or otherwise attached to the commander's organization. In these cases, the commander should confer whenever possible with the member's parent organization commander about whether NJP should be offered by the TDY commander or the parent organization commander. If the TDY commander intends to initiate NJP, he or she should confer with the parent organization commander concerning the member's background, past duty performance, and other relevant factors before initiating the action. If the member is in the Air Force Reserve or Air National Guard, prior coordination with his parent organization commander is required.

**3.8. Description of Offense.** The SJA should advise the commander how to properly allege each offense to state a violation of the UCMJ, consistent with available facts and evidence. Follow the form of specifications in MCM, Part IV. However, an NJP action remains valid even if the specification fails to include all the elements of an offense, provided that the member is reasonably informed of the nature of the alleged misconduct. The legal office shall provide the language describing offenses on AF Form 3070, except where impractical. Computerized forms authorized by AFLSA/JAJM should be used, where available.

### **3.9. Notifying the Member.**

3.9.1. A commander initiating an NJP proceeding completes item 1 of the AF Form 3070, signs and dates the form, and causes the member to be notified and advised of his or her rights using AF Form 3070. MCM, Part V, paragraph 4a. Normally, the initiating commander notifies and serves the member, then signs and annotates the date and time the member was served notice of the proceeding in item 2 of the AF Form 3070. Where circumstances prevent the initiating commander from personally notifying and serving the AF Form 3070 on the member or the initiating commander elects not to do so, the initiating commander may direct a subordinate, senior in rank to the member (when practicable), to notify and serve the member. The subordinate annotates the date and time of service and signs in item 2 of the AF Form 3070 as the person serving the member. Regardless of who serves the member, provide the member with a copy of all three pages of the AF Form 3070 and any attachments.

Also make available to the member all statements and evidence upon which the commander intends to rely in making his or her decision.

3.9.2. If a commander refers the matter to a superior commander, the superior commander should normally initiate the NJP action and provide the notification. Where it is not practical for the member to appear personally before the superior commander, the subordinate commander may initiate the NJP proceeding using the AF Form 3070, item 1.a.(2). When doing so, the subordinate commander notifies the member that NJP proceedings before a superior commander is being recommended (including the identity of the superior commander) and advises the member of his or her rights.

3.9.3. A commander who initially recommended NJP proceedings by a superior commander may dispose of the case personally if the AF Form 3070 has not been forwarded to the superior commander. If the commander does not intend to personally pursue the matter as an NJP action, the commander withdraws the AF Form 3070 and provides it to the servicing SJA so termination of NJP proceedings can be recorded in AMJAMS. If the commander intends to personally pursue the matter as an NJP action, the commander has two options. First, the commander may notify the member by memorandum that he or she intends to decide whether to impose punishment under the pending NJP action instead of the superior commander, giving the member a new opportunity (3 duty days) to accept NJP proceedings or demand trial by court-martial. Attach the memorandum to the AF Form 3070. Alternatively, the commander may withdraw the existing action and initiate a new action on a new AF Form 3070.

**3.10. Changing Commanders before Nonjudicial Punishment Proceedings are Complete.** A member must always be informed of the identity of the commander who will actually make the findings and punishment decisions before a decision is required as to whether to accept nonjudicial punishment or demand court-martial.

3.10.1. If a new commander assumes responsibility for the case after the member was offered NJP proceedings, but before findings are made and punishment, if any, has been imposed, inform the member of the identity of the new commander and provide 3 duty days to accept NJP proceedings or to demand trial by court-martial. The new commander accomplishes this by either notifying the member about the change in writing, using the notification format in [Attachment 4](#), or by withdrawing the old AF Form 3070 and initiating a new action on a new AF Form 3070. If the notification format is used, it becomes an attachment to the AF Form 3070.

3.10.2. If a change in commanders occurs after imposition of punishment but before the appeal decision has been made, inform the member in writing of the identity of the new commander and obtain an acknowledgment of this change from the member. Attach the notification and acknowledgment to the original AF Form 3070. Such a change neither impacts the former commander's action nor affords the member additional rights. The new commander has full authority to ensure completion of the action. However, if an appeal is made, the former commander must prepare a written summary of any oral presentation and the source and substance of any other information considered, consistent with paragraph [4.6.3](#). Notification of a change in commanders merely for the Unfavorable Information File (UIF) decision (paragraph [6.4.2](#).) is not required.

3.10.3. If a commander notifies a member of the intent to recommend that a superior commander impose NJP, a change of the superior commander provides the identical rights, creating a new opportunity to accept or reject NJP. The subordinate commander follows the procedures set forth above in such situations.

**3.11. Discovery of Additional Offenses.** When evidence of an additional offense or offenses arises following initiation of NJP proceedings, but before the member is notified of the punishment, a commander may:

- 3.11.1. Withdraw the initial AF Form 3070 and reinstate NJP to include all offenses. If the form has been sent to a superior commander, do so only with the superior's agreement; or
- 3.11.2. Proceed with the initial NJP proceeding and offer a second NJP for the additional offense or offenses.

**3.12. Member's Decision to Accept or Reject Nonjudicial Punishment.** Acceptance of NJP is a choice of forum, not an admission of guilt. The member has 3 duty days to accept or reject NJP following notification of the intent to impose NJP. Weekends and holidays are counted if they are normally scheduled duty days for the member. In practical application, the member is not required to accept or reject NJP sooner than 72 hours following notification of the intent to impose NJP. The initiating commander may, upon written application, grant an extension for good cause.

3.12.1. Members must reflect their NJP decision by initialing the appropriate blocks in item 3 of the AF Form 3070, sign and then annotate the date and time signed. Member must initial whether or not the member:

- 3.12.1.1. Consulted a lawyer.
- 3.12.1.2. Demands trial by court-martial or waives the right to court-martial and accepts NJP proceedings.
- 3.12.1.3. Attached a written presentation.
- 3.12.1.4. Requests a personal appearance before the commander and whether or not the member requests the personal appearance be public.

3.12.2. The member has a right to consult a lawyer before making any decisions, and a lawyer may assist the member throughout the proceedings. The location and phone number of the closest military defense counsel should be provided to the member to further explain the member's rights. The member may retain civilian counsel at the member's own expense. The commander should encourage the member to take full advantage of this time to consult with legal counsel, to decide whether to accept NJP proceedings, and if so, to prepare matters in defense, extenuation, or mitigation. The right to legal counsel does not include the right to request individual military defense counsel as defined in MCM, Part II; Rules for Courts-Martial (RCM), Rule 506(b)(1); and AFI 51-201. However, where a member asserts an attorney-client relationship with a military defense counsel other than the detailed military defense counsel, in regard to the same matter for which he or she is being offered nonjudicial punishment, process the request for this counsel according to the provisions of AFI 51-201.

3.12.3. If a member does not reply with his or her elections in time, the commander may continue with the proceedings and note in item 3 of AF Form 3070 "member failed to respond" and initial. The member's failure to respond in time is deemed an acceptance of nonjudicial proceedings under Article 15. However, if the commander has reason to believe a failure to respond resulted from reasons beyond that individual's control; the commander may not, without good cause, proceed with NJP action.

**3.13. Member's Presentation.** See MCM, Part V, paragraph 4c. A member is generally entitled to appear personally before the imposing commander and present matters in defense, mitigation, or extenuation, except under extraordinary circumstances or when the imposing commander is unavailable. There is no requirement that a lawyer be made available to accompany the member at a personal appearance. See MCM, Part V, paragraph 4c(1) for the member's entitlements at a personal appearance.

3.13.1. If a personal appearance before a superior commander in proceedings initiated under paragraph 3.9.2. is prevented by the unavailability of the superior commander or by extraordinary circumstances, the member may appear personally before the subordinate commander who served him or her with the AF Form 3070. The subordinate commander then prepares a memorandum summarizing the presentation and forwards it to the superior commander, along with all written matters submitted by the member.

3.13.2. Under any other circumstances where a personal appearance is prevented by the unavailability of the imposing commander or by other extraordinary circumstances, the member appears personally before a person designated by the imposing commander. The designee prepares a memorandum summarizing the presentation and forwards it to the imposing commander, along with all written matters submitted by the member. MCM, Part V, paragraph 4c(1).

3.13.3. The member may request the proceedings be open to the public subject to the limitations as outlined in MCM Part V, paragraph 4c(1)(G). The commander may open the personal appearance to the public, even though the member does not request it or agree the appearance should be open, subject to the following restrictions. Public NJP at commander's calls, unit training assemblies and other public gatherings is inappropriate. Such proceedings are prohibited. NJP proceedings may be attended by a limited number of people in a more private setting, i.e., the commander's office. The individuals in attendance at NJP proceedings should normally be limited to those in the member's supervisory chain or people who can assist the decision authority (First Sergeant, Squadron Section Commander, etc.).

3.13.4. If the proceedings involve a waiver of the statute of limitations, the member must sign a written waiver that becomes an attachment to the AF Form 3070. See MCM, Part V, paragraph 1f(4); RCM 907(b)(2)(B); and *United States v. Moore*, 32 M.J. 170 (CMA 1991).

### ***Section 3C—Imposing and Administering Punishments***

#### **3.14. Commander's Findings.**

3.14.1. Following full and fair consideration of the evidence, including any matters presented by the member, the commander indicates one of the following actions in item 4.a. of the AF Form 3070 by marking or initialing the appropriate block on the form:

3.14.1.1. The proceedings are terminated because NJP is not appropriate or because the member did not commit the offense(s) alleged.

3.14.1.2. The member committed one or more offenses alleged. The commander lines out and initials any offense(s) for which NJP is not appropriate or which the member did not commit. If the member committed one or more lesser included offenses, the commander consults with the SJA before changing an alleged offense to a lesser included offense.

3.14.2. If the commander terminates the proceedings, the original AF Form 3070 is sent to the servicing SJA for appropriate AMJAMS entries. The AF Form 3070 is then destroyed.

**3.15. Commander's Punishments.** The commander must consult the servicing SJA before imposing punishment except where impracticable due to military exigencies. The commander completes item 4, and signs and dates the form in the indicated blocks. Punishment is recorded in item 14 of the AF Form 3070 as a continuation of 4.a.(2). See **Attachment 5** for examples of punishment formats. The date of imposition of NJP is the date the form is signed by the commander in the signature block in item 4. The member should be informed of the punishment and acknowledge receipt of the action on the same date punishment is imposed. See paragraph **4.5.2.** The commander may suspend all or a portion of the punishment when imposed. If the commander is not able to inform the member of the punishment on the date imposed, the member should be informed as quickly as possible. For additional guidance on suspension of punishment, see paragraph **5.4.**

**3.16. Maximizing the Impact of Punishment.** Whenever possible, the commander should impose non-judicial punishment personally.

**3.17. Permissible Punishments.** **Table 3.1.** and **Table 3.2.** set out the maximum permissible punishments, based on the grade and status of the commander and the grade of the member.

3.17.1. The maximum authorized punishment in a single case is subject to the limitations in MCM, Part V, paragraph 5d.

3.17.2. Commanders should generally impose an unsuspended reduction in grade in combination with forfeitures of pay only when the maximum exercise of NJP authority is warranted (e.g., repeat offender, most serious offenses, past rehabilitative efforts have failed, or recalcitrant offender). This general policy does not preclude such punishment where warranted in the sound exercise of judgment by the commander imposing punishment.

3.17.3. No more than one-half of the member's pay per month is subject to forfeiture, regardless of the number of Article 15s imposed.

3.17.4. Extra duties may be required to be performed at any time and for any length of time during the period of punishment imposed. No extra duties may be imposed which constitute: cruel or unusual punishment; punishment not sanctioned by the customs of the Air Force (e.g., using the member as a personal servant); duties normally intended as an honor (e.g., assignment to honor guard); actions required to be performed in an unnecessarily degrading manner (e.g., an order to clean a floor with a toothbrush); duties that are a safety or health hazard to the member; or duties that would demean the member's position as an NCO.

**3.18. Punishment Effective Date.** Unsuspended reductions in grade and forfeitures of pay take effect on the date the commander imposes punishment. MCM, Part V, paragraph 5g. All other unsuspended punishments take effect immediately upon notification to the member, unless the commander provides otherwise in the punishment endorsement. The suspension of a punishment takes effect on the date the commander imposes punishment, not the date the member was notified of the punishment.

3.18.1. Prompt execution of punishment is desired absent unique circumstances, which include, but are not limited to, the member serving similar punishment from a prior UCMJ action, lack of available space in a correctional custody facility, physical incapacity of the airman, emergency leave, and/or humanitarian considerations.

3.18.2. Once commenced, punishments involving restraint (i.e., correctional custody, restrictions, or arrest in quarters) or extra duties run continuously. However, these punishments may be stayed pursuant to the member's request based upon an appeal not being acted upon in accordance with MCM, Part V, paragraph 7d, or when temporarily interrupted due to either the fault of the member or unique circumstance as listed above in paragraph 3.18.1. Note that special rules for imposing punishment on reserve component members may be authorized under MCM, Part V, paragraphs 5e and 5f.

**3.19. Release of Information.** Public release of information subsequent to imposition of punishment should be limited to an individual's rank, offense, punishment and squadron. Do not release information that would readily identify the member.

*Section 3D—Action When the Member Demands Trial by Court-Martial*

**3.20. Restrictions.** If a member demands trial by court-martial, the commander may not impose NJP.

**3.21. Commander's Options.** The commander is not required to prefer court-martial charges, and no mandate exists to refer a case to trial by court-martial. Charges preferred following rejection of an offered Article 15 are in no way limited to those originally included in the offer. The form and substance of the charges may be altered to meet legal or proof requirements, and new charges may be added.

**3.22. Withdrawing Demand for Trial.** Once a member demands trial, the member may withdraw it only with the commander's approval. In addition, convening authority concurrence is required if charges have been preferred. Procedurally, the member must submit a written request to the commander who will then indorse approval or disapproval. The request will become an attachment to the AF Form 3070. If withdrawal is granted, pen and ink changes should be made in item 3 of the AF Form 3070 to reflect the member's new decision to accept NJP proceedings and the commander should continue with the NJP proceedings. While this is the preferred resolution, initiating a new NJP proceeding remains an alternative.

**Table 3.1. Enlisted Punishments.**

<b>Punishment</b>	<b>Imposed by Lt or Capt</b>	<b>Imposed by Major</b>	<b>Imposed by Lt Col or Above</b>
Additional Restrictions	May not Impose NJP on CMSgt or SMSgt	May not Impose NJP on CMSgt or SMSgt	See Note 2 for reduction of CMSgt or SMSgt
Correctional Custody	Up to 7 days	30 days	30 days
Reduction	CMSgt -No, SMSgt -No, MSgt - No, TSgt - No, SSgt - One Grade, SrA - One Grade, A1C - One Grade, Amn - to AB	CMSgt - No, SMSgt - No, MSgt - No, TSgt - One Grade, SSgt - One Grade, SrA - to AB, A1C - to AB, Amn - to AB	CMSgt - See Note 2, SMSgt - See Note 2, MSgt - One Grade, TSgt - One Grade, SSgt - One Grade, SrA - to AB, A1C- to AB, Amn-to AB
Forfeiture	7 days pay	1/2 of 1 month's pay per month for 2 months	1/2 of 1 month's pay per month for 2 months
Reprimand	Yes	Yes	Yes
Restriction	14 days	60 days	60 days
Extra Duties	14 days	45 days	45 days

**NOTES:**

1. See MCM, Part V, paragraph 5d, for further limitations on combinations of punishments. For example, restriction and extra duties can be combined to run concurrently, but the combination must not be for a period in excess of the maximum duration imposable for extra duties. This means a field grade officer may combine 45 days of extra duties to run concurrently with 45 days of restriction when imposing NJP on an enlisted member.
2. CMSgt or SMSgt may be reduced one grade only by MAJCOM commanders, commanders of unified or specified commands, or commanders to whom promotion authority to these grades has been delegated. See AFI 36-2502, *Airmen Promotion Program*.
3. Neither bread and water nor diminished rations punishments are authorized.
4. Frocked commanders may exercise only that authority associated with their actual pay grade. No increased punishment authority is conferred by assumption of the title and insignia of the frocked grade.

**Table 3.2. Officer Punishments.**

<b>Punishment</b>	<b>Imposed by Colonel</b>	<b>Imposed by General Officer or GCMCA</b>
Correctional Custody	No	No
Reduction	No	No
Forfeiture	No	1/2 of 1 month's pay per month for 2 months
Reprimand	Yes	Yes
Arrest in Quarters	No	30 days
Restriction	30 days	60 days
Extra Duties	No	No

**NOTES:**

1. Officers in the grade of Lieutenant Colonel and below (includes frocked Colonels) may not impose NJP on an officer.
2. Only MAJCOM commanders, commanders of unified commands, and their equivalents, or higher may impose NJP on general officers.
3. See MCM, Part V, paragraph 5d, for further limitations on combinations of punishments.

## Chapter 4

### NONJUDICIAL PUNISHMENT APPEALS

**4.1. General Guidance.** An appeal may be taken if a member considers the punishment to be unjust or disproportionate to the offense. MCM, Part V, paragraph 7a. The findings, the punishment, or both may be appealed. A member may assert the punishment is unjust because the offense was not committed.

**4.2. Appellate Authority.** NJP appeals are made to the “next superior authority,” who is generally the immediate Air Force commander superior to the officer who imposed the punishment. For purposes of determining the “next superior authority,” a principal assistant who imposed punishment is considered the functional equivalent of the officer who delegated the power. Some situations call for application of the following special rules:

4.2.1. When a principal assistant to a commander of an Air Force establishment, unit, or non-unit (other than Air Force elements of organizations outside the Air Force) imposed punishment, the “next superior authority” is the next Air Force commander superior to the commander who delegated the power.

4.2.2. When a detachment commander imposes punishment, the “next superior authority” is the detachment commander’s immediate commander and not the commander of the host installation.

4.2.3. When a section commander of a squadron imposes punishment, the “next superior authority” is the squadron commander’s superior commander. However, when a section commander for all other units or elements imposes punishment (i.e., Group, Wing, Numbered Air Force, Major Command, Center, Field Operating Agency, and Direct Reporting Unit), the “next superior authority” is the section commander’s immediate commander.

4.2.4. When an Air Force element commander, as identified in paragraph [2.2.5.2.](#), imposes punishment, the “next superior authority” is the SAFO for elements under the SAFO’s direct authority.

4.2.4.1. A SAFO may not act as the “next superior authority” if the SAFO is not at least a field grade officer, and higher in grade to the element commander who imposed the punishment. Paragraph [4.2.5.](#) or [4.2.6.](#) should be applied in these cases.

4.2.4.2. A SAFO may not act as the “next superior authority” if the SAFO is also acting as the element commander. Paragraph [4.2.5.](#) or [4.2.6.](#) should be applied in these cases.

4.2.5. When either a SAFO or Air Force element commander (whose SAFO is unable to act under paragraph [4.2.4.1.](#) and [4.2.4.2.](#)) for the headquarters staff organization in a unified command, subordinate unified command, joint task force, combined command or combined task force imposes punishment, the “next superior authority” is the SAFO or Air Force element commander in the headquarters staff organization at the next superior level in the joint or combined force, if any, or the general court-martial convening authority (GCMCA) for the Air Force unit responsible for providing support to the headquarters staff organization under AFI 25-201. The Air Force officer who acts on the appeal must at least be a field grade officer and higher in grade to the officer who imposed the punishment. When the next superior authority is not at least a field grade officer and higher in grade to the SAFO or Air Force element commander who imposed the punishment, or when the SAFO or Air Force element commander for the headquarters staff of a unified command imposed the punishment, the AF/CV is the “next superior authority” and the appeal is forwarded directly to AFLSA/JAJM.

4.2.6. When the SAFO or Air Force element commander (whose SAFO is unable to act under paragraph 4.2.4.1. and 4.2.4.2.) of an activity outside the Air Force imposes punishment, the "next superior authority" is the Commander, 11th Wing. However, if the Commander, 11th Wing, is not higher in grade to the SAFO or element commander who imposed punishment, the AF/CV is the "next superior authority" and the appeal is forwarded directly to AFLSA/JAJM.

4.2.7. When the commander of a MAJCOM, direct reporting unit, or field operating agency imposes punishment, SECAF has designated AF/CC as the appellate authority and authorized AF/CC to delegate this authority to AF/CV. Forward such appeals directly to AFLSA/JAJM.

4.2.8. When a joint force commander, including an Air Force officer acting in his or her capacity as a joint force commander, imposes punishment, the "next superior authority" is the next superior joint force commander. When the commander of a unified command imposes punishment, or is otherwise disqualified from being the appellate authority, forward the appeal to the Chairman of the Joint Chiefs of Staff for appropriate action by the Secretary of Defense or his designee, in accordance with Joint Publication 0-2. The SAFO or commander of the member's element notifies the servicing Air Force SJA of the appeal. The servicing SJA coordinates with the SJA or legal counsel who services the appellate authority to explain Air Force policy and procedures for NJP, and to advise the appellate authority's SJA or legal counsel that collateral decisions and processing (such as AMJAMS inputs, personnel and finance actions, and UIF and selection record entries) will be made within Air Force channels.

4.2.9. When a multiservice commander in a combined command, combined task force, or activity outside the Air Force imposes NJP on an Air Force member, the next superior authority is the immediate multiservice commander who is a member of the U.S. Armed Forces and who is superior to the imposing commander, if any, or the Air Force GCMCA with UCMJ authority over the Air Force member. However, if the next superior authority or GCMCA is junior in grade to the imposing commander, the AF/CV is the "next superior authority" and the appeal is forwarded directly to AFLSA/JAJM.

4.2.10. When a unique command structure or situation exists, AFLSA/JAJM may designate another individual to act as the appellate authority. Applications for such designations shall be submitted to AFLSA/JAJM in writing through appropriate command channels.

**4.3. Format.** Appeals must be in writing. No right or entitlement to a personal appearance before the appellate authority is provided. See MCM, Part V, paragraph 7c.

**4.4. Delegation of Authority.** If the "next superior authority" is a general officer or a GCMCA, that individual may delegate the power to act on appeals to a principal assistant in the manner described in paragraph 2.7.

#### **4.5. Procedures for Appeals.**

4.5.1. Punishment is not stayed pending appeal, except as provided in MCM, Part V, paragraph 7d.

4.5.2. At the time a commander informs the member of the punishment, the commander:

4.5.2.1. Directs the member to acknowledge receipt of the punishment and right to appeal by signing item 5 of the AF Form 3070, and then annotating the date and time signed.

- 4.5.2.1.1. If the member refuses to acknowledge receipt of the punishment and rights to appeal, the commander will note in item 5 "member refused to acknowledge receipt of punishment and right to appeal" and initial. The time limit for appeal is still applicable despite the member's failure to sign the AF Form 3070.
  - 4.5.2.2. Informs the member that the appeal can be filed anytime within 5 calendar days. A decision not to appeal is final.
  - 4.5.2.3. Explains that if an appeal is not filed within 5 days, appellate rights will be waived. The commander may grant an extension of time to appeal for good cause and upon written application received within the 5-day appeal period.
  - 4.5.2.4. Explains to the member that any documents supporting the appeal must be submitted at the same time the member makes the appeal decision.
  - 4.5.2.5. Explains to the member that he or she is entitled to the advice of legal counsel in making the appeal decision.
- 4.5.3. The member must reflect his or her appeal decision by initialing only one block in item 6 of the AF Form 3070, sign and then annotate the date and time signed.
- 4.5.3.1. The member makes a choice between not appealing, appealing and submitting matters in writing, or appealing and not submitting matters in writing.
  - 4.5.3.2. The appeal decision is a one-time decision made during the time limit for appeal explained in paragraph 4.5.2.2. All documents supporting the appeal must be submitted at the same time as the appeal decision. If the member decides not to appeal, the imposing commander makes the UIF determination in item 9 of the AF Form 3070 and continues processing the NJP action in accordance with **Section 6B**. If the member decides to appeal, the imposing commander continues processing the appeal.
  - 4.5.3.3. The member's decision to appeal or not to appeal in item 6 of the AF Form 3070 ends the time limit for appeal. If the imposing commander has not acted on the appeal, the member may withdraw the appeal. Pen and ink changes should be made in item 6 of the AF Form 3070 to reflect the member's decision not to appeal.
  - 4.5.3.4. If the member refuses to sign his or her appeal decision within the time limit for appeal, the commander will note in item 6 of the AF Form 3070 "member refused to make appeal decision within the time limit for appeal" and initial. The member's failure to respond in time is deemed a waiver of his or her right to appeal.

#### **4.6. Action on Appeal by Imposing Commander.**

- 4.6.1. The imposing commander examines the written matters submitted, if any, and after consulting with the SJA, may grant the relief requested in whole or in part, by using his or her powers to suspend, mitigate, remit, or set aside the punishment.
- 4.6.2. The imposing commander records his or her decision on the appeal in item 7 of the AF Form 3070 by initialing the appropriate block and signing the form. If the imposing commander grants relief, he or she annotates the relief granted in item 14 as a continuation of item 7. The annotation should state "As the commander who imposed nonjudicial punishment, I grant your appeal [(in full)(in part)] as follows: (State the specific relief granted)." If the commander grants full relief, do not

forward the appeal. If the commander grants less than the full relief requested, forward the appeal to the appellate authority.

4.6.3. If the appeal is forwarded to the appellate authority, the imposing commander adds written comments by indorsement through the servicing SJA (see MCM, Part V, paragraph 7e) addressing any contentions raised by the member. The imposing commander states in the forwarding indorsement whether the member has served any portion of the punishment. The imposing commander includes in the package all written materials considered in imposing the punishment, including a summary of the member's oral presentation, if applicable, as well as a summary of any other information considered and its source. The indorsement may state the commander's rationale for imposing punishment and a recommendation for action on the appeal. Since the indorsement includes deliberative process, the member is not entitled to a copy.

**4.7. Action on Appeal by Appellate Authority.** The appellate authority reviews the written material forwarded by the initiating commander and the legal review required by MCM, Part V, Section 7e. The legal review must be in writing. This material does not become part of the permanent record, but is returned to the SJA for filing. The appellate authority may grant the relief requested in whole or in part, by using the same power as may be exercised by the imposing commander to suspend, mitigate, remit, or set aside the punishment. The appellate authority records his or her decision on the appeal in item 8 of the AF Form 3070 by initialing the appropriate block and signing the form. Relief granted (in full or in part) is recorded in item 14 as a continuation of item 8. Unless otherwise stated, relief granted as a result of an appeal is effective from the date the punishment was initially imposed. See MCM, Part V, paragraph 7f(1). If all punishment is disapproved, the entire action must be set aside and removed from the member's record; an NJP action cannot consist of "no punishment."

**4.8. Officer and Senior Noncommissioned Officer (NCO) Selection Record Determination.** When the member is an officer or a senior NCO (Master Sergeant and above), the imposing commander must decide whether to file the record of NJP in the member's selection record. This decision is made after punishment is imposed and any appeal is resolved. Follow the procedures in AFI 36-2608, Military Personnel Records Systems. Also refer to AFI 36-2608 for filing records of vacation or supplemental proceedings (i.e., AF Forms 366 and 3212). The GCM SJA shall simultaneously forward the final decision memorandum regarding the selection record and any related correspondence (the commander's intent to file memorandum and individual statements, if any) with the original record of NJP for inclusion in the member's master personnel record group in accordance with paragraph 6.8.

4.8.1. In a joint or combined command or task force, if an officer assigned to a different service imposed NJP on an Air Force member, the Air Force officer identified in AFI 36-2608 must make the selection record filing decision.

## Chapter 5

### SUPPLEMENTARY ACTIONS

#### *Section 5A—Suspension, Mitigation, Remission and Set Aside of Punishment*

**5.1. General Guidance.** Use AF Form 3212, **Record of Supplementary Action Under Article 15, UCMJ**, to record actions to suspend, mitigate, remit, or set aside punishment, unless such actions are accomplished as part of an appeal, which is governed by **Chapter 4**.

**5.2. Consultation Required.** Commanders must consult the servicing SJA before taking action to suspend, mitigate, remit, or set aside a previously imposed punishment. A commander may take such action upon his or her own initiative or upon a request from the member. Members requesting such relief should use the sample format at **Attachment 6**.

**5.3. Action by Successor in Command.** A commander's power to suspend, mitigate, remit, or set aside NJP passes to any successor in command. For these purposes, the successor in command may be either:

5.3.1. The officer who succeeded to the command or the position of the officer who imposed the punishment and who is authorized to impose on the member the punishment involved; or

5.3.2. An officer authorized to impose on the member the punishment involved, if the member has been reassigned. If the successor lacks authority, that officer forwards the member's request to the next superior commander. MCM, Part V, paragraph 7f(1).

**5.4. Suspension.** See MCM, Part V, paragraph 6a. Suspension is the postponement of the application of all or part of the punishment for a specific probationary period, until a specified date. It will be automatically remitted (canceled) at the end of that period, if the member does not violate the condition(s) of suspension. Suspension is often warranted for a first offense, or where persuasive extenuating or mitigating circumstances exist.

5.4.1. A commander may, at any time, suspend any part or amount of the unexecuted punishment imposed. An executed punishment of reduction in grade or forfeiture may be suspended, provided the suspension is accomplished within a period of 4 months after the date imposed.

5.4.2. Suspension of punishment may not be for a period longer than 6 months from the date the suspension was imposed, and the expiration of the current enlistment or term of service of the member involved automatically terminates any period of suspension. However, six months may be longer than 180 days; for example, 1 July punishment suspended through 31 December. A suspension action will set a specific date after which, unless sooner vacated, the suspension will terminate and the punishment will be remitted. This date should not exceed the member's expiration of term of service (ETS) at the time suspension action is taken.

5.4.3. When reduction in grade is later suspended, the member's original date of rank (DOR), held before the reduction, is reinstated. The effective DOR, however, is the date of the document directing the suspension. See AFI 36-2604, *Service Dates and Dates of Rank*.

5.4.4. Suspension of a punishment automatically includes a condition that the service member does not violate any punitive articles of the UCMJ. Commanders may specify other conditions as well, but

shall consult with the SJA before imposing them. Include any additional conditions of suspension within the punishment indorsement. The additional condition(s) upon which suspension is based must be clearly stated and capable of being completed during the period of suspension. See [Attachment 5](#) for sample language.

5.4.5. The member, if undergoing a suspended reduction in grade, is ineligible for promotion, including testing and consideration if already tested. See AFI 36-2502, Airman Promotion Program. The member, if serving any suspended punishment, is ineligible to reenlist, but may be eligible for an extension of enlistment. See AFI 36-2606, Reenlistment in the United States Air Force.

**5.5. Mitigation.** See MCM, Part V, paragraph 6b. Mitigation is a reduction in either the quantity or quality of a punishment with its general nature remaining the same. (For example, a punishment of correctional custody for 20 days can be mitigated to correctional custody for 10 days or to restriction for 20 days. 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.)

5.5.1. With the exception of reduction in grade, only the unexecuted part or amount of the punishment can be mitigated.

5.5.2. A reduction in grade, whether executed or unexecuted, can only be mitigated to forfeitures. A reduction in grade will not be mitigated to a lesser reduction or no reduction. Mitigation of a reduction in grade must be done within 4 months after the date of execution. When mitigating a reduction in grade to forfeiture of pay, the amount of the forfeiture imposed may not be greater than the amount that could have been imposed by the officer who initially imposed the mitigated punishment. See MCM, Part V, paragraph 6b. If the reduction was executed, the DOR for the restored grade is the date of the indorsement mitigating the punishment. For example, if an member receives Article 15 punishment on 1 June, consisting of a reduction in grade, and the commander subsequently (on 1 July) mitigates the reduction to a forfeiture, both the effective date and DOR for the restored grade is 1 July. See AFI 36-2604, *Service Dates and Dates of Rank*.

5.5.3. A forfeiture of pay, to the extent to which it has not been executed, may be mitigated to a lesser forfeiture of pay, but cannot be mitigated to other forms of punishment.

5.5.4. Restraints on liberty (such as arrest, correctional custody, extra duties, and restriction) may not be mitigated to forfeitures or reduction in grade because the general nature of the punishment would be changed. Arrest in quarters can be mitigated to restriction; correctional custody can be mitigated to extra duties or restriction or both; extra duties can be mitigated to restriction; but restriction, being the least severe restraint on liberty, cannot be mitigated to a different form of punishment. Also, when a restraint on liberty is mitigated, 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 correctional custody is mitigated to restriction, the mitigated punishment may not exceed restriction for a period of 10 days.

**5.6. Remission.** See MCM, Part V, paragraph 6c. Remission is simply the cancellation of any portion of the unexecuted punishment. An unsuspended reduction is executed on imposition. It can therefore never

be remitted, but under appropriate circumstances may be suspended (paragraph 5.4.), mitigated (paragraph 5.5.), or set aside (paragraph 5.7.).

**5.7. Set Aside.** See MCM, Part V, paragraph 6d. Set aside occurs when the punishment, or any part or amount thereof, whether executed or unexecuted, is removed from the record and any rights, privileges, pay, or property affected by the relevant portion of the punishment are restored. A set aside of all punishment voids the entire nonjudicial punishment action. A commander may not set aside punishment more than 4 months after execution of the punishment, unless the commander determines unusual circumstances exist and explains them in an attachment to AF Form 3212.

5.7.1. Set aside is not normally considered a rehabilitation tool, like suspension, remission, and mitigation. Commanders should not routinely set aside punishment, but should exercise this discretionary authority only in the rare and unusual case where a question concerning the guilt of the member arises or where the best interests of the Air Force are served by clearing the member's record.

5.7.2. Setting aside a punishment in its entirety restores the member to the position held before imposition of the punishment, as if the Article 15 action had never been initiated. For example, if a member has been reduced in grade through Article 15 punishment, and the reduction is later set aside, the effective date and DOR reverts to that held before reduction. See AFI 36-2604.

**5.8. Limitations on Suspension, Mitigation, Remission and Set Aside of Punishment.**

A commander can suspend, mitigate, remit, or set aside punishment under Article 15 only if the commander has the authority to impose that punishment. For example, a commander in the grade of captain or lieutenant cannot suspend, mitigate, remit, or set aside punishment imposed by a field grade commander beyond what the captain or lieutenant could impose. A commander not empowered to act may, of course, recommend suspending, mitigating, remitting, or setting aside an action to the next superior commander empowered to impose such punishment(s).

**5.9. Processing Requirements.** Process and file all requests to suspend, mitigate, remit, or set aside punishment, and any actions taken in response, with the original Article 15 record and ensure inclusion with other official file copies.

***Section 5B—Vacation of Suspension***

**5.10. General Guidance.** Commanders must consult the servicing SJA before taking action to vacate a suspended nonjudicial punishment. A commander may vacate all or a portion of the suspended punishment. MCM, Part V, paragraph 6a(5) provides further guidance on vacation actions.

**5.11. Notification to the Member.** Except when prevented by unauthorized absence of the member, the commander completes item 1 of the AF Form 366, Record of Proceedings of Vacation of Suspended Nonjudicial punishment, signs and dates the form, and causes the member to be notified and advised of his or her rights, using the form. Normally, the commander notifies and serves the member, then signs and annotates the date and time the member was served notice of the proceeding in item 2 of the AF Form 366. Where circumstances prevent the commander from personally notifying and serving the AF Form 366 on the member or the commander elects not to do so, the commander may direct a subordinate, senior in rank to the member (when practicable), to notify and serve the member. The subordinate annotates the date and time of service and signs in item 2 of the AF Form 366 as the person serving the member. Regardless of

who serves the member, provide the member with a copy of both pages of the AF Form 366. Make available to the member all statements and evidence upon which the commander intends to rely in making his or her decision.

5.11.1. The servicing SJA provides a description of the basis for the vacation (i.e., misconduct or failure to meet an additional condition upon which the suspension was based) and other information pertinent to the suspended punishment on the AF Form 366.

5.11.2. If a new commander assumes responsibility for the case after a vacation proceeding has been initiated, but before the vacation decision is made, inform the member of the identity of the new commander and provide 3 duty days to present matters. The new commander accomplishes this either by notifying the member about the change in writing, or by withdrawing the old AF Form 366 and initiating a new vacation proceeding on a new AF Form 366. If the notification format is used, it becomes an attachment to the AF Form 366.

5.11.3. The member may present matters in defense, extenuation, or mitigation regarding the violation on which the vacation action is based.

5.11.4. The member may make either a written presentation or personal appearance or both. If the member elects to make a personal appearance, he or she may personally appear before the commander authorized to vacate suspension of the nonjudicial punishment. If such an appearance is impracticable due to the unavailability of the commander or by extraordinary circumstances, the member may appear before a person designated by the commander who will prepare a summary of the personal appearance for the commander. At the personal appearance, the member may (a) present evidence; (b) present witnesses who are reasonably available; and (c) be accompanied by someone to speak on his or her behalf. There is no requirement that a lawyer be made available to accompany the member at the personal appearance.

**5.12. Member's Elections.** The member has 3 duty days to make his elections. The member must initial in item 3 of the AF Form 366 whether or not the member consulted a lawyer, attached a written presentation, or requests a personal appearance before the commander. The commander may, upon written application, grant an extension for good cause.

5.12.1. If a member does not reply with his or her elections in time, the commander may continue with the proceedings and note in item 3 of AF Form 366 "member failed to respond" and initial. The member's failure to respond in time does not prevent the commander from continuing with the vacation proceedings. However, if the commander has reason to believe a failure to respond resulted from reasons beyond that individual's control, the commander may not, without good cause, proceed with vacation proceedings.

**5.13. Timing.** Vacation of a suspension must be based on the violation of the condition(s) of the suspension and occur within the period of suspension. See paragraph 5.4.4. To vacate a suspension, the commander must present the member with the AF Form 366 before the end of the suspension period. The suspension period is stayed if the probationer has been properly notified via AF Form 366 during the suspension period. The member's unauthorized absence also interrupts the suspension period. For example, if a member is absent without leave for 10 days, the period of suspension is extended 10 days.

**5.14. Commander's Decision.**

5.14.1. Following full and fair consideration of the evidence, including any matters presented by the member, the commander indicates one of the following actions in item 4a of the AF Form 366 by marking or initialing the appropriate block on the form:

5.14.1.1. The vacation proceedings are terminated because vacation of the suspended punishment is not appropriate or because the member did not violate the condition(s) of the suspension.

5.14.1.2. The member violated one or more of the conditions of the suspension. The commander lines out and initials any violations for which vacation of the suspended punishment is not appropriate or which the member did not violate.

5.14.2. The commander completes item 4 of the AF Form 366, and signs and dates the form in the indicated blocks.

5.14.2.1. If the commander terminates the proceedings, the original AF Form 366 is sent to the servicing SJA for appropriate AMJAMS entries. The AF Form 366 is then destroyed.

5.14.2.2. Punishment is recorded in item 9 of the AF Form 366 as a continuation of 4.a(2).

5.14.3. At the time a commander informs the member of the vacation decision, the commander directs the member to acknowledge the action taken on the proceedings of vacation of suspended non-judicial punishment and that there is no right to appeal by signing and dating item 5 of the AF Form 366.

5.14.3.1. If the member refuses to acknowledge receipt of the vacation action, the commander will note in item 5 "member refused to acknowledge receipt of vacation action" and initial.

**5.15. Effect on Suspended Reductions.** If a reduction in grade is suspended, but the suspension is later vacated, the DOR in the grade to which the member is reduced is the date the original reduction was imposed by the commander. The effective date, however, is the date of the vacation action. See AFI 36-2604. For example, if the commander imposed Article 15 punishment on 1 June, consisting of a suspended reduction in grade for 6 months, and the commander subsequently vacates the suspension on 2 September, the effective date of the reduction is 2 September, but the member's new DOR is 1 June. Pay is not retroactively recouped.

## Chapter 6

### MISCELLANEOUS MATTERS

#### *Section 6A—Indorsing Forms and Correspondence*

**6.1. Procedure.** Prepare any indorsements to AF Form 3070 using normal correspondence practices. Send the correspondence involved in processing NJP (including prescribed forms) through command channels, except as provided in paragraph 6.8. Unless specifically prescribed, each intermediate commander decides whether to add matters of substance by indorsement. If so, they are signed as noted below.

#### **6.2. Content of Indorsements:**

6.2.1. Any intermediate commander or delegee may recommend action or provide other information that might help the superior commander in arriving at a decision.

6.2.2. Following actions by appropriate authority, any intermediate commander, delegee, or staff officer signing under the authority line may furnish information (including administrative instructions) to the member or to a subordinate commander by indorsement.

**6.3. Copies.** Copies of Article 15 documentation are reproduced from the signed original. The SJA ensures copies of all documents and attachments that will comprise the record of punishment, as set forth in paragraph 6.11., are provided to the member and to each level of command involved.

#### *Section 6B—Action Taken on Records of Punishment, Including Vacation, Suspension, Mitigation and Set Aside Actions*

**6.4. Action by the Commander.** The commander who imposed the punishment or who took action to vacate, suspend, mitigate, remit, or set aside, sends the record to the servicing SJA for review, comment, and recommendation as appropriate.

6.4.1. If the punishment includes unsuspended correctional custody, the commander immediately notifies the correctional custody monitor of the details, including inclusive dates, to begin the punishment.

6.4.2. Before sending the AF Form 3070 to the servicing SJA, but after completing all other action, including appeal, the commander imposing punishment indicates in item 9 of the AF Form 3070 whether the NJP record will be filed in the member's Unfavorable Information File by initialing, signing and dating the appropriate block. The imposing commander should make this determination even in cases that were appealed. However, if the imposing commander is not available, any person authorized by AFI 36-2907, Unfavorable Information File (UIF) Program, may make the UIF determination.

6.4.2.1. It is within the commander's discretion to provide the member with an opportunity to respond to the UIF decision, regardless of whether the entry of the NJP record in the UIF is mandatory or optional.

6.4.2.2. In a joint or combined command or task force, if an officer assigned to a different service imposed NJP on an Air Force member, the Air Force officer identified in AFI 36-2907 must make the UIF decision.

6.4.2.3. The member acknowledges that he or she was informed about the commander's UIF decision and action taken on any appeal by signing item 10 on the AF Form 3070, and annotating date signed. If the member refuses to sign, the commander will note in item 10 "member refused to sign" and initial.

**6.5. Action by the Servicing SJA.** The SJA or designated attorney reviews the NJP action for legal sufficiency if no appeal is taken, or after the member acknowledges action on the appeal and the imposing commander returns the record to the servicing SJA. The reviewing attorney signs and dates item 11 of the AF Form 3070 (item 6 of the AF Form 366 and item 3 of the AF Form 3212, when applicable) when the record is found legally sufficient. The NJP action is final at that point and admissible for purposes of RCM 1001(b)(2). This is also the final action for purposes of the timeliness metric as recorded in AMJAMS. In officer and senior NCO cases, do not delay completion of servicing SJA legal sufficiency review for completion of selection record processing.

6.5.1. The SJA then sends:

6.5.1.1. One copy of the record to the officer who supervises the correctional custody program when the case involves unsuspended correctional custody.

6.5.1.2. Two copies of the record, with an AF Form 1373, MPO Document Control Log-Transmittal, to the Accounting and Finance Office (AFO) if the punishment affects the member's pay. The SJA keeps a copy of the AF Form 1373. The person who provided the copies of the record to AFO will date and initial item 12 of the AF Form 3070 (item 7 of the AF Form 366 and item 4 of the AF Form 3212, when applicable) or mark "N/A" if not applicable.

6.5.1.3. One copy of the record to the unit UIF monitor if the record will be filed in a UIF. The unit UIF monitor is responsible for ensuring entry into a UIF. See AFI 36-2907 for detailed procedures.

6.5.1.4. One copy of the record to the servicing MPF, with an AF Form 1373, in all cases. The SJA keeps a copy of the AF Form 1373. The person who provided the copy of the record to MPF will date and initial item 12 of the AF Form 3070 (item 7 of the AF Form 366 and item 4 of the AF Form 3212, when applicable).

6.5.1.5. The original record (and two complete copies for officer cases) directly to the SJA for the officer exercising general court-martial convening authority, after providing the record to the MPF and AFO and noting the date of receipt. File the receipted copy of AF Form 1373 as prescribed in paragraph [6.12](#).

6.5.1.6. In cases involving O-6 selects and above, one copy of the record and all supporting documents to the member's commander for forwarding IAW AFI 90-301. See paragraph [1.5](#). In all cases where the incident was investigated by Air Force Office of Special Investigations or Security Forces, provide the investigating office with sufficient information on final disposition to fulfill their respective reporting requirements.

6.5.2. In all cases, the servicing SJA of the initiating command processes Article 15 input forms for AMJAMS.

**6.6. Action by the Military Personnel Flight (MPF).** The MPF, on receiving the record, acknowledges receipt on a copy of the AF Form 1373 and returns this form to the servicing SJA and takes appropriate personnel actions.

**6.7. Action by the GCMCA SJA.** The GCMCA SJA or designated attorney performs an administrative supervisory review on behalf of the GCMCA and returns legally deficient proceedings for correction. The reviewing attorney signs and dates item 13 of the AF Form 3070 (item 8 of the AF Form 366 and item 5 of the AF Form 3212, when applicable) when the record is in compliance with AFI 51-202 and sends a copy of it to the servicing SJA.

### ***Section 6C—Filing of the Original Record on Nonjudicial Punishment Proceedings***

**6.8. Procedures.** The GCMCA SJA sends the original NJP action to one of the addresses listed in paragraphs **6.8.1.** through **6.8.4.** for filing in the master personnel record group. In officer and senior NCO cases, simultaneously forward the original memorandum regarding the final decision to file or not file the NJP action in the selection record, including required attachments, with the original NJP action. See paragraph **4.8.**

6.8.1. For Active Duty Members and Reservists on Extended Active Duty (as defined in **Attachment 1**):

6.8.1.1. For general officers, send to AFSLMO/GOMO, 1040 Air Force Pentagon, Washington, DC 20330-1040. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM, send a copy to that MAJCOM's SJA.

6.8.1.2. For colonels or selectees, send to AFLSMO/CMOB, 1040 Air Force Pentagon, Washington, DC 20330-1040. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM, send a copy to that MAJCOM's SJA.

6.8.1.3. For other officers (Lt Col or below), send to HQ AFPC/DPPBR1, 550 C Street West, Suite 5, Randolph AFB, TX 78150-4707. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM, send a copy to that MAJCOM's SJA.

6.8.1.4. For CMSgts or selectees, send to HQ AFPC/DPAC, 550 C Street West, Suite 30, Randolph AFB, TX 78150-4732.

6.8.1.5. For SMgt or MSgt, send to HQ AFPC/DPPBR2, 550 C Street West, Suite 5, Randolph AFB, TX 78150-4707.

6.8.1.6. For other enlisted (TSgt and below), send to HQ AFPC/DPSAMI, 550 C Street West, Suite 21, Randolph AFB, TX 78150-4723.

6.8.2. For Reservists not on Extended Active Duty:

6.8.2.1. For colonels (and selectees) and general officers, send the original to HQ ARPC/DSMP, 6760 E. Irvington Place, Suite 4450, Denver, CO 82079-4450 and send a copy to HQ USAF/REPS, 1150 Air Force Pentagon, Washington, DC 20330-1150.

6.8.2.2. For all members below the grade of colonel, send to ARPC/DSMP, 6760 East Irvington Place, Suite 4450, Denver, CO 80280-4450.

6.8.3. For Air National Guard (ANG) members, send to Office of the Chief Counsel, National Guard Bureau, Jefferson Plaza One, Attn: AF Paralegal, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231. Forward a copy of the ANG member's Title 10 (active duty) orders with the Article 15 action. The Office of the Chief Counsel serves as a central collection point for these actions and they will notify the specific State Adjutant General concerned and will determine ultimate disposition of the record.

6.8.4. For cases involving USAFA Cadets, send all to HQ USAFA/DPY, 2304 Cadet Drive, USAF Academy, CO 80840-5000, for inclusion in section 3 of the CPR-1. Upon commissioning, these records will be forwarded to the officer master personnel record group, AFPC/DPSRI1, 550 C Street West, Suite 21, Randolph AFB, TX 78150-4723.

6.8.5. Article 15 correspondence relating to Air Force members for offenses that occur while on INACTIVE duty for training (IDT) must be processed through Air Force Reserve Command (AFRC) legal channels to HQ AFRC.

### ***Section 6D—Effect of Errors in Nonjudicial Punishment Proceedings***

**6.9. Effect of Errors.** See MCM, Part V, paragraph 1h. An NJP proceeding is not legally sufficient if it contains an error that materially prejudices a substantial right of the member. If such an error exists and cannot be remedied within the same proceeding, the appropriate NJP authority sets aside the defective NJP action. A new action may be initiated but any punishment imposed as a result of an additional proceeding may be no more severe than that originally imposed. See MCM, Part V, paragraph 7f(3). If a material error exists and can be remedied within the same proceeding without prejudicing the member's rights, reflect the correction, whenever possible, as a pen and ink change on the form (i.e., AF Forms 3070, 366 or 3212) initialed and dated by the commander and the member. However, if a pen and ink change will not result in a clear and unambiguous corrected record, the commander, by indorsement to the form, should notify the member of the error and thoroughly explain the correction to the record. The member signs an acknowledgment to the commander's indorsement. The indorsement and acknowledgment become an attachment to the form.

6.9.1. Administrative or clerical errors and minor errors that do not materially prejudice a substantial right of a member do not require correction to make the NJP proceeding legally sufficient. However, such errors may be corrected with pen and ink changes in the manner described above.

### ***Section 6E—Disposition of Records of Nonjudicial Punishment Proceedings***

**6.10. Governing Directive.** The disposition of records of NJP is governed by AFMAN 37-139, Records Disposition Schedule. SJA offices are authorized to destroy copies of NJP records after three years, or when no longer needed, whichever is later. See AFMAN 37-139, Table 51-3.

**6.11. Contents of Record.** The record of punishment consists of the AF Form 3070, the decision letter under AFI 36-2608, *Military Personnel Records System*, and if applicable, *AF Forms 366, 3212, and any of their attachments*. Examples of attachments are additional pages for punishment or statement of offenses, change of commander notifications (paragraphs [3.9.3.](#) and [3.10.](#)), waivers of the statute of limi-

tation (paragraph 3.13.4.), withdrawals of request for trial (paragraph 3.22), and indorsements correcting errors requiring explanation (paragraph 6.9.).

**6.12. Supporting Documentation.** Evidence and other written materials considered as a basis for imposing punishment, or vacating a suspended punishment, or submitted by the member in mitigation, extenuation, or defense or on appeal are supporting documentation and not part of the record. Supporting documentation also includes summaries of a member's oral presentation, initiating commander indorsements for appeals, and legal reviews for an appellate authority. File such evidence and other written materials in the office of the servicing SJA of the commander who initiated the Article 15 as attachments to the file copy of the action, except for AF Form 1373. AF Forms 1373 are maintained separately from the Article 15 file, and in chronological sequence.

### ***Section 6F—Forms***

**6.13. Forms Prescribed:** The following forms are prescribed for recording NJP actions:

6.13.1. AF Form 3070, **Record of Nonjudicial Punishment Proceedings.**

6.13.2. AF Form 366, **Record of Proceedings of Vacation of Suspended Nonjudicial Punishment.**

6.13.3. AF Form 3212, **Record of Supplementary Action under Article 15, UCMJ.**

**6.14. Authority.** This AFI is the authority for legal service support listed in this instruction. No other order, writing, or implementing agreement is required unless otherwise provided for herein.

**6.15. Host Command Jurisdiction.** All members of a tenant unit or Air Force Element (AFELM), whether designated a unit or not, are attached to the host command, and its appropriate subordinate and higher commands for the exercise of nonjudicial punishment authority under Article 15, UCMJ. However, commanders of tenant units, and other AFELM officers authorized to impose nonjudicial punishment pursuant to this instruction retain concurrent authority to take such action.

6.15.1. Any appeal from nonjudicial punishment is made to the superior authority in the command channel of the officer who imposes punishment, or to the appeal authority otherwise designated by AFLOA/JAJM.

6.15.2. Regardless of who imposes punishment or acts on the appeal, the action is administratively processed through the host command's Staff Judge Advocate.

6.15.3. In a Joint Command, if nonjudicial punishment is imposed on an Air Force member by a commander of a different service, the decisions as to collateral administrative actions (e.g., entry into UIF or selection record) will be made by the senior Air Force officer or commander of the AFELM in the Joint Command.

6.15.3.1. If the Senior Air Force Officer (SAFO) or commander of the element is unavailable or is not senior to the commander who imposed nonjudicial punishment, decisions as to collateral administrative actions (e.g., entry into UIF or selection record) are made by a general court-martial convening authority (GCMCA) of the Air Force Host Command who is senior to the commander who imposed nonjudicial punishment. If the Air Force Host Command GCMCA is not senior to the commander who imposed punishment, collateral administrative action decisions will

be made by a GCMCA, who is senior to the commander who imposed punishment, designated by the respective Air Force Host Command's MAJCOM commander.

**6.16. Exceptions to Support Agreements.**

6.16.1. When a support agreement differing from that above is necessary or desirable, it must be documented at the general court-martial convening authority level or higher.

6.16.2. All judge advocates assigned as circuit trial and defense counsel, area defense counsel, and defense paralegals are assigned to Air Force Legal Operations Agency (AFLOA) for jurisdiction under Article 15, UCMJ. Military judges are assigned to the Air Force District of Washington (AFDW) for jurisdiction under Article 15, UCMJ.

JACK L. RIVES, Major General, USAF  
The Judge Advocate General

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Title 10, United States Code, Section 815, *Commanding Officer's Non-Judicial Punishment Manual for Courts Martial, United States (2000 Edition)*

Air Force Policy Directive 51-2, *Administration of Military Justice*

Air Force Instruction 25-201, *Support Agreements Procedures*

Air Force Instruction 36-2502, *Airman Promotion Program*

Air Force Instruction 36-2604, *Service Dates and Dates of Rank*

Air Force Instruction 36-2606, *Reenlistment in the United States Air Force*

Air Force Instruction 36-2608, *Military Personnel Records System*

Air Force Instruction 36-2907, *Unfavorable Information File (UIF) Program*

Air Force Instruction 38-101, *Air Force Organization*

Air Force Instruction 51-201, *Administration of Military Justice*

Air Force Instruction 51-604, *Appointment to and Assumption of Command*

Air Force Instruction 90-301, *Inspector General Complaints*

Air Force Manual 37-139, *Records Disposition Schedule*

Air Force Doctrine Document 2, *Organization and Employment of Aerospace Power*

Joint Publication 0-2, *Unified Action Armed Forces*

***Abbreviations and Acronyms***

**AMJAMS**—Automated Military Justice Analysis and Management System

**DOR**—Date of Rank

**GCMCA**—General Court-Martial Convening Authority

**MCM**—Manual for Courts-Martial

**NJP**—Nonjudicial Punishment

**RIP**—Record on Individual Personnel

**SAFO**—Senior Air Force Officer

**SJA**—Staff Judge Advocate

**TDY**—Temporary Duty

**UCMJ**—Uniform Code of Military Justice

**UIF**—Unfavorable Information File

*Terms*

**Activity Outside the Air Force**—An organization or agency to which Air Force members are assigned or attached that is not part of the Air Force. They include, but are not limited to, Defense Agencies, DoD Field Activities, and consolidated units, such as consolidated flying units. While joint and combined organizations are not part of the Air Force, they are not considered "Activities Outside the Air Force" for the purpose of this instruction.

**Air Force unit**—A named or numbered military organization constituted by directives issued by HQ USAF. Air Force units include major commands, numbered air forces, wings, groups, squadrons, centers, direct reporting units, field operating agencies, and provisional units. See AFI 38-101. They also include deployable units formed from air expeditionary forces (AEFs), such as air expeditionary wings, groups or squadrons, that are attached to an Air and Space Expeditionary Task Force or an in-place Numbered Air Force that has been directed by a MAJCOM to support a joint force commander. A duly constituted unit will have a commander who has assumed or been appointed to command in accordance with AFI 51-604.

**Extended Active Duty**—A tour of active duty, other than active duty for training or temporary tours of active duty, performed by a member of an Air Reserve component that is normally for a duration in excess of 90 days. Strength accountability for persons on EAD changes from ARC to the active force.

**Attachment 2****NOTICE OF RECOUPMENT OF BENEFITS****STATEMENT OF UNDERSTANDING REGARDING  
RECOUPMENT OF EDUCATION ASSISTANCE, SPECIAL PAY, OR BONUSES**

I understand that the Air Force may be entitled to recoup a portion of education assistance, special pay, or bonus money which I received, if any, if I separate before completing the period of active duty I agreed to serve. I understand this recoupment applies regardless whether I voluntarily separate or I am involuntarily discharged. I further understand: (1) the recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to me, as the unserved portion of active duty bears to the total period of active duty I agreed to serve; and (2) that if I dispute that I am indebted for educational assistance, a board or other authority will make findings and recommendations concerning the validity of the indebtedness.

**Attachment 3****DETERMINING THE "CASE-READY DATE"**

The following dates may be used as the case-ready date:

1. The date the commander receives the completed report of investigation (ROI) (e.g., OSI, SF, IG, Social Actions, commander-directed inquiries/investigations, or civilian police reports).
2. The date the commander receives a positive urinalysis notification or the date provided in paragraph 1, above, whichever is later.
3. The date the commander is notified of financial misconduct (e.g., government charge card abuse, bad checks, or failure to pay a just debt) or the date provided in paragraph 1, above, or the date provided in paragraph 4, below, whichever is later.
4. The date the commander receives sufficient other information to support disciplinary action (e.g., internal unit inquiries, or other information not resulting from formal ROIs). Disorderly conduct, failure to obey a lawful order, disrespect, dereliction of duty and failure to go are some typical offenses not resulting in a formal ROI.
5. If the commander has not received legally sufficient evidence to support disciplinary action under paragraphs 1 through 4, above, the date the commander receives supplementary information to support such action.
6. The date the commander learns the member's identity following an "unknown suspect" ROI, or the occurrence of the events described in either paragraphs 1 or 5, above, whichever is later.
7. The date the member returns to military control (e.g., from leave, AWOL, TDY, waived civilian jurisdiction), or the date of any event provided for in paragraphs 1 through 6, above, whichever is later.
8. If none of the above apply, then use the date of the latest offense.
9. In the event of a change of command, the case ready date for the successor commander will be the same date as it was for the original commander.

**Attachment 4****SAMPLE FORMAT FOR NOTIFICATION OF CHANGE OF COMMANDER**

MEMORANDUM FOR [GRADE/NAME OF MEMBER]

(Date)

FROM: \_\_\_\_\_/CC

SUBJECT: Change of Commander for Nonjudicial Punishment Proceedings

1. On \_\_\_\_\_, my predecessor in command notified you of (his/her) intent to impose nonjudicial punishment under Article 15, UCMJ, upon you for the offense(s) of . As the successor in command, I will be the commander who decides whether to impose the punishment, and if so, its terms.

2. [NOTE: Use this paragraph only if the member has already made their elections in item 3 of AF Form 3070] On \_\_\_\_\_, you chose to accept nonjudicial punishment proceedings for (this offense)(these offenses) and to waive your right to trial by court-martial. I am providing you an additional opportunity to decide whether you will accept nonjudicial punishment proceedings or demand trial by court-martial. Indicate your choice below.

3. Acknowledge receipt of this letter by signing the indorsement below and returning this document within 3 duty days.

[TYPED NAME, GRADE], USAF

Commander

1st Ind, (Grade/Name of Member)

To: \_\_\_\_\_/CC

I acknowledge receipt of the above memorandum at \_\_\_\_\_ hours on \_\_\_\_\_(date).

[Note: if member already made their elections in item 3 of AF Form 3070, add the following]

In accordance with paragraph 2 above, my initials reflect my elections below:

- a.  I have consulted a lawyer.  I have not consulted a lawyer.
- b.  I demand trial by court-martial.  I waive my right to court-martial and  
accept nonjudicial punishment proceedings.
- c.  I have attached a written presentation.  I have not attached a written presentation.
- d.  I request a personal appearance and that it not be public.  
 I request a personal appearance and that it not be public.  
 I do not request to make a personal appearance before you.

[NAME/GRADE OF MEMBER], USAF

## Attachment 5

## FORMAT OF NONJUDICIAL PUNISHMENTS

The following are examples of punishment language. See paragraph 3.15.

1. Reduction to the grade of \_\_\_\_\_, with new date of rank of \_\_\_\_\_. (See Note 1)
2. Forfeiture of \$ \_\_\_\_\_ pay. [If 1 month] (See Note 2)
3. Forfeiture of \$ \_\_\_\_\_ pay per month for 2 months. (See Note 2)
4. \_\_\_\_\_ days correctional custody
5. Arrest in quarters for \_\_\_\_\_ days.
6. Restriction to the limits of (state the area) for \_\_\_\_\_ days.
7. \_\_\_\_\_ days extra duty.
8. Reprimand. No special language is required. The reprimand may be placed on the form or on an attachment.
9. If any of the above punishments are suspended:  
 \_\_\_\_\_, suspended through (provide date), after which time it will be remitted without further action, unless sooner vacated.
10. Additional guidance for suspended punishments:
  - a. Sample of two grade reduction with one grade suspended: "Reduction to the grade of Airman, with reduction below Airman First Class suspended until \_\_\_\_\_, after which time it will be remitted without further action, unless sooner vacated. The new date of rank for Airman First Class is \_\_\_\_\_."

b. Sample of suspension of portion of the forfeitures imposed: "Forfeiture of \$\_\_\_\_\_ pay per month for two months. That portion of the forfeitures in excess of \$\_\_\_\_\_ pay per month for two months is suspended until \_\_\_\_\_, after which time it will be remitted without further action, unless sooner vacated."

c. Sample of conditional suspension: "Reduction to the grade of Senior Airman, suspended until \_\_\_\_\_, after which time it will be remitted without further action unless sooner vacated.

In accordance with MCM, Part V, paragraph 6a(4), this suspension is subject to the additional condition of [(your attending the Alcoholics Anonymous Meetings at \_\_\_\_\_ once per week during the period of \_\_\_\_\_ to \_\_\_\_\_) or (your making restitution to \_\_\_\_\_ in the amount of \$\_\_\_\_\_ by \_\_\_\_\_)]. (See Note 3)

**NOTES:**

1. If the reduction in grade is suspended, a new date of rank is not established.
2. State forfeitures in whole dollar amounts. Also, if punishment includes a reduction, whether or not suspended, the forfeitures must be based on the grade to which reduced. See MCM, Part V, paragraph 5c(8).
3. The end date for completing the condition must be a date within the period of suspension. The condition must be clearly stated and not subject to interpretation. See paragraph **5.4.4**.

**Attachment 6****SAMPLE FORMAT FOR REQUEST FOR SUSPENSION, MITIGATION,  
REMISSION, OR SET ASIDE OF NONJUDICIAL PUNISHMENT**

MEMORANDUM FOR \_\_\_\_\_/CC (see note 1)

(Date)

FROM: [GRADE/NAME OF MEMBER]

SUBJECT: \_\_\_\_\_ of Nonjudicial Punishment (see note 2)

1. On \_\_\_\_\_, the Commander, \_\_\_\_\_, imposed nonjudicial punishment upon me, consisting of (reduction to the grade of \_\_\_\_\_ and restriction to \_\_\_\_\_ Air Force Base for \_\_\_ days). [(No part of the punishment) or (The portion of the punishment relating to \_\_\_\_\_)] was suspended.

2. I request [(all the punishment) (the unserved portion of the punishment) or (the unserved portion of the punishment relating to \_\_\_\_\_) or (\_\_\_\_\_)] be suspended.

or

2. I request that [(all the punishment) (the unserved portion of the punishment) (the portion of the punishment relating to reduction) or (\_\_\_\_\_)] be mitigated to [(a forfeiture of (\$\_\_\_\_\_) or (\_\_\_\_\_)].

or

2. I request that [(the unexecuted portion of the punishment) or (\_\_\_\_\_)] be remitted (effective \_\_\_\_\_).

or

2. I request that [(the entire nonjudicial punishment action) or (that part of the nonjudicial punishment that called for \_\_\_\_\_)] be set aside.

3. My reasons for requesting this action are (as follows:) (attached.)

[NAME/GRADE OF MEMBER], USAF

Attachments: (see note 3)

**NOTES:**

1. Use through address to send through intermediate channels, if necessary.
2. Insert "Suspension," "Mitigation," "Remission," or "Set Aside" as appropriate.
3. Indicate any attachments. If this letter is sent to a location different from that where punishment was imposed, add as an attachment the AF Form 3070, and any other pertinent information which may assist in making a decision.