



DEPARTMENT OF THE NAVY
UNITED STATES NAVAL ACADEMY
121 BLAKE ROAD
ANNAPOLIS MARYLAND 21402-1300

USNAINST 5812.1A
5/SJA
16 NOV 2012

USNA INSTRUCTION 5812.1A

From: Superintendent

Subj: NONJUDICIAL PUNISHMENT PROCEDURES

Ref: (a) JAGINST 5800.7D, Manual of the Judge Advocate General, Chapter 1, Part B, Sections 0106-0119
(b) Manual for Courts-Martial (2008), Part 5
(c) USNA memo 5812 of 5 Nov 12
(d) USNA memo 5812 of 5 Nov 12

Encl: (1) Report and Disposition of Offense(s) (NAVPERS 1626/7)
(2) CPO Disciplinary Review Board Recommendation
(3) Executive Officer Inquiry Guide
(4) Nonjudicial Punishment Guide

1. Purpose. To establish procedures for the implementation of Nonjudicial Punishment (NJP) at the United States Naval Academy (USNA) and promulgate guidance under which it will be conducted in order to maintain good order and discipline onboard USNA.

2. Policy. References (a) and (b) delegated to the Commandant of Midshipmen and the Chief of Staff (COS) the authority to impose NJP on personnel below pay-grade O-6, assigned to USNA. The Commandant will conduct NJP for all personnel within the Commandant Cost Center, while the COS will do so for all remaining personnel. The Commandant/COS's authority encompasses all guidance and procedures set forth in references (c) and (d).

3. Minor Offenses. NJP, also commonly referred to as Captain's Mast, may be imposed for minor offenses under the punitive articles of the Uniform Code of Military Justice (UCMJ). Whether an offense is minor depends on several factors. Ordinarily, a minor offense is an offense for which the maximum sentence imposable at a court-martial would not include a dishonorable discharge or confinement for longer than one year.

4. Statute of Limitations. The statute of limitations for imposition of NJP is two years from the date of the offense.

5. Procedures

a. Preliminary Inquiry

(1) Upon receipt of information that a servicemember attached to USNA is accused or suspected of committing an offense, the Staff Judge Advocate (SJA) will initiate a preliminary inquiry into the charges or suspected offenses.

(2) Upon completion of the preliminary inquiry of offenses committed by servicemembers in paygrades E-8 and below, the SJA will forward the preliminary inquiry, the NAVPERS 1626/7 (enclosure (1)), and a copy of the accused's electronic service record to a Disciplinary Review Board.

(3) Preliminary inquiries of offenses committed by servicemembers in paygrades E-9 through O-5 may be forwarded directly to Executive Officer Inquiry and will not be processed through the Disciplinary

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Review Board. Pursuant to paragraph 5d, all cases may be forwarded directly to the Commandant/COS for NJP.

(4) In cases where law enforcement has conducted a formal investigation and issued an investigative report, the Staff Judge Advocate is not required to initiate a preliminary investigation. Any investigative report created by law enforcement may serve as the basis for NJP.

b. Disciplinary Review Board

(1) The USNA Command Master Chief may convene a Disciplinary Review Board (DRB), and will serve as Chairman of the DRB, appointing members as necessary.

(2) The DRB will consist of three to five Chief Petty Officers. DRB members should normally not be in the accused's immediate divisional chain of command, but may be within the same department.

(3) The DRB will convene when directed by the Command Master Chief.

(4) The DRB will review all pertinent documentation and interview the accused after proper advisement of UCMJ Article 31(b) rights. The accused may not refuse to appear before a DRB.

(5) After thorough review, the DRB will forward enclosure (2) to the accused's Divisional Director. Each recommendation will include a brief summary of the DRB's analysis of the case. Should the case be recommended for disciplinary action, a recommendation of appropriate punishment shall also be provided by the DRB.

(6) All actions of the DRB shall be conducted based upon agreement of a majority of the members of the DRB. Dissenting members may attach alternative recommendations to the DRB report for consideration by the NJP authority.

(7) The DRB's recommendations are not binding on the Divisional Director or Commandant/COS.

c. Executive Officer Inquiry

(1) Should the DRB recommend disciplinary action, the accused may appear before their Divisional Director. That officer will evaluate the evidence to determine how the matter should be resolved, following the guidance in enclosure (3). The accused may not refuse to appear before their Divisional Director.

(2) The Divisional Director may:

(a) Dismiss all charges and take no action.

(b) Dismiss all charges and take other administrative action.

(c) Recommend Nonjudicial Punishment before the Commandant/COS.

(d) Recommend other disposition of the offenses, including nonpunitive measures, administrative processing, or courts-martial.

(3) The Divisional Director's recommendations are not binding on the Commandant/COS.

d. Bypassing DRB and Executive Officer Inquiry Procedures. The DRB and Executive Officer Inquiry procedures outlined in paragraphs 5b and 5c are optional. The Commandant/COS may conduct NJP directly after the preliminary inquiry or receipt of a law enforcement investigative report.

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e. Nonjudicial Punishment

(1) If the Commandant/COS determine NJP is appropriate, the Commandant/COS shall conduct Nonjudicial Punishment following the guidance in enclosure (4). At NJP, the Commandant/COS may:

- (a) Dismiss the charges with or without a warning to the accused.
- (b) Dismiss the charges and impose administrative or nonpunitive measures, or both.
- (c) Impose authorized punishment.
- (d) Postpone action.

(2) Any servicemember assigned to USNA may refuse NJP and demand trial by courts-martial. They shall indicate whether they choose to do so in the appropriate block in enclosure (1).

(3) The accused shall be given the opportunity to consult with counsel about whether to accept NJP. Military counsel is provided at government expense. Civilian counsel is available at the accused's expense. There is no right to have counsel at NJP. If the accused is not given the opportunity to consult with counsel, and the accused accepts NJP, it may still be imposed, but the result will not be admissible in aggravation at any subsequent courts-martial.

(4) At Nonjudicial Punishment, the accused has the following rights:

- (a) To be present; however, the accused may waive this right.
- (b) To remain silent.
- (c) To have personal representative in attendance.
- (d) To examine evidence.
- (e) To present matters in defense or in extenuation and mitigation.
- (f) To call "reasonably available" witnesses (there is no power to subpoena civilian witnesses).
- (g) To have a public hearing. The accused may request a "closed mast," but does not have the right to one.

(5) At Nonjudicial Punishment, Military Rules of Evidence do not apply, except those applying to privileges and self-incrimination.

(6) The burden of proof for a finding of guilty on an offense is by a preponderance of the evidence.

(7) As a method of enforcing good order and discipline, NJP results may be published to members of the command within one month of the imposition of NJP. The accused's name will not be published, but the member may be referred to by rate, rank, or pay grade.

(8) After imposition of NJP, the accused has five working days to appeal to the Vice Chief of Naval Operations in accordance with reference (c), section 0117d. Grounds for appeal are an improper finding of guilt, or disproportionality of the punishment to the offense. Appeals must be in writing.

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6. Review Responsibility. The Staff Judge Advocate is responsible for the annual review of this instruction.

/S/
M. H. MILLER

Distribution:
All Non Mids (Electronically)

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REPORT AND DISPOSITION OF OFFENSE(S)
NAVPERS 1626/7

To: Commanding Officer, _____ Date of Report: _____

I hereby report the following named person for the offense(s) noted:

NAME OF ACCUSED	SERIAL NO.	SOCIAL SECURITY NO.	RATE/GRADE	BR. & CLASS	DIV/DEPT

PLACE OF OFFENSE(S)	DATE OF OFFENSE(S)

DETAILS OF OFFENSE(S) (Refer by Article of UCMJ if known. If unauthorized absence, give following info: time and date of commencement, whether over leave or liberty, time and date of apprehension or surrender and arrival on board, loss of ID card and/or liberty card, etc.):

NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT

(Rate/Grade/Title of person submitting report)

(Signature of Accuser)

I have been informed of the nature of the accusation(s) against me. I understand I do not have to answer any questions or make any statement regarding the offense(s) of which I am accused or suspected. However, I understand any statement made or questions answered by me may be used as evidence against me in event of trial by court-martial (Article 31, UCMJ).

Witness: _____ (Signature) Acknowledged: _____ (Signature of Accused)

PRE-MAST
RESTRAINT

PRE-TRIAL
CONFINEMENT

NO RESTRICTION

RESTRICTED: You are restricted to the limits of _____ in lieu of arrest by order of the CO. Until your status as a restricted person is terminated by the CO, you may not leave the restricted limits except with the express permission of the CO or XO. You have been informed of the times and places which you are required to muster.

(Signature and title of person imposing restraint)

(Signature of Accused)

INFORMATION CONCERNING ACCUSED

CURRENT ENL. DATE	EXPIRATION CURRENT ENL. DATE	TOTAL ACTIVE NAVAL SERVICE	TOTAL SERVICE ON BOARD	EDUCATION	GCT	AGE
MARITAL STATUS	NO. DEPENDENTS	CONTRIBUTION TO FAMILY OR QTRS. ALLOWANCE (Amount required by law)		PAY PER MONTH (Including sea or foreign duty pay, if any)		

RECORD OF PREVIOUS OFFENSE(S) (Date type action taken etc. Nonjudicial punishment incidents are to be included.)

PRELIMINARY INQUIRY REPORT

From: Commanding Officer

Date: _____

To: _____

1. Transmitted herewith for preliminary inquiry and report by you, including, if appropriate in the interest of justice and discipline, the preferring of such charges as appeal to you to be sustained by expected evidence.

REMARKS OF DIVISION OFFICER (Performance of duty, etc.)

NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT

RECOMMENDATION AS TO DISPOSITION

REFER TO COURT-MARTIAL FOR TRIAL OF ATTACHED CHARGES
(Complete Charge Sheet (DD Form 458) through Page 2)

DISPOSE OF CASE AT MAST

NO PUNITIVE ACTION NECESSARY OR DESIRABLE

OTHER

COMMENT (Include data regarding availability of witnesses, summary of expected evidence, conflicts in evidence, if expected. Attach statements of witnesses, documentary evidence such as service record entries in UA cases, items of real evidence, etc.)

(Signature of Investigating Officer)

ACTION OF EXECUTIVE OFFICER

DISMISSED

REFER TO CAPTAIN'S MAST

SIGNATURE OF EXECUTIVE OFFICER

RIGHT TO DEMAND TRIAL BY COURT-MARTIAL

(Not applicable to persons attached to or embarked in a vessel)

I understand that nonjudicial punishment may not be imposed on me if, before the imposition of such punishment, I demand in lieu thereof trial by court-martial. I therefore (do) (do not) demand trial by court-martial.

WITNESS

SIGNATURE OF ACCUSED

ACTION OF COMMANDING OFFICER

- DISMISSED
- DISMISSED WITH WARNING (Not considered NJP)
- ADMONITION: ORAL/IN WRITING
- REPRIMAND: ORAL/IN WRITING
- REST. TO _____ FOR _____ DAYS
- REST. TO _____ FOR _____ DAYS WITH SUSP. FROM DUTY
- FORFEITURE: TO FORFEIT \$ _____ PAY PER MO. FOR _____ MO(S)

- CONF. ON _____ 1, 2, OR 3 DAYS
- CORRECTIONAL CUSTODY FOR _____ DAYS
- REDUCTION TO NEXT INFERIOR PAY GRADE
- REDUCTION TO PAY GRADE OF _____
- EXTRA DUTIES FOR _____ DAYS
- PUNISHMENT SUSPENDED FOR _____
- REFER TO ART. 32 INVESTIGATION
- RECOMMENDED FOR TRIAL BY GCM

DETENTION: TO HAVE \$ _____ PAY PER MO. FOR (1, 2, 3) MO(S) DETAINED FOR _____ MO(S)

AWARDED SPCM

AWARDED SCM

DATE OF MAST

DATE ACCUSED INFORMED OF ABOVE ACTION

SIGNATURE OF COMMANDING OFFICER

It has been explained to me and I understand that if I feel this imposition of nonjudicial punishment to be unjust or disproportionate to the offenses charged against me, I have the right to immediately appeal my conviction to the next higher authority within 5 days.

SIGNATURE OF ACCUSED

DATE

I have explained the above rights of appeal to the accused.

SIGNATURE OF WITNESS

DATE: _____

FINAL ADMINISTRATIVE ACTION

APPEAL SUBMITTED BY ACCUSED

FINAL RESULT OF APPEAL:

DATED: _____

FORWARDED FOR DECISION ON: _____

APPROPRIATE ENTRIES MADE IN SERVICE RECORD AND PAY ACCOUNT ADJUSTED WERE REQUIRED

FILED IN UNIT PUNISHMENT BOOK:

DATE: _____

(Initials)

DATE: _____

(Initials)

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CPO DISCIPLINARY REVIEW BOARD RECOMMENDATION

From: Chairman, CPO Disciplinary Review Board
To: Divisional Director
Via: Staff Judge Advocate's Office

Subj: CPO DRB RECOMMENDATIONS

1. The CPO Disciplinary Review Board (DRB) met at _____ on _____ in the case of _____.

The CPO DRB makes the following recommendations:

2. The CPO DRB members consisted of:

Very respectfully,

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EXECUTIVE OFFICER INQUIRY GUIDE

Divisional Director: The Commandant of Midshipmen/Chief of Staff is contemplating the imposition of NJP. XOI (Executive Officer Inquiry) is an informal hearing and is part of the NJP process. You may not refuse XOI.

(Accused), you are suspected of committing the following violation(s) of the UCMJ:

Charge I:

Specification:

Divisional Director: You are advised that:

You have the right to remain silent and make no statement at all;

Any statement you do make can be used as evidence against you in this XOI, at NJP or future proceedings; and

You have the right to consult with an attorney, civilian (at your own expense), military (provided at no cost to you), or both.

Divisional Director: [Interview the accused.] (Note: If admits guilt, let accused articulate extenuation and mitigation.

If denies guilt, let accused give his/her version.)

[Interview the witnesses.]

[Chain of command statements.]

Divisional Director: [To accused] Do you have any final statements?

ACC:

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Divisional Director: I am taking the following action in your case (Choose One):

- I am going to hold your case in abeyance pending further investigation;

OR

- I am going to forward it to the Commandant of Midshipmen/Chief of Staff for Non-Judicial Punishment;

OR

- I am going to dismiss your case, however, I am imposing the following nonpunitive measures:

- Complete ____ hours of EMI
- Nonpunitive Letter of Censure/Warning

OR

- I am dismissing the charge(s) with a verbal warning. Be advised that dismissal does not preclude this case from later going to NJP.

OR

- I am dismissing the charge(s). Be advised that dismissal does not preclude this case from later going to NJP.

Divisional Director: You are dismissed.

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NONJUDICIAL PUNISHMENT GUIDE

COMMANDANT OF MIDSHIPMEN/CHIEF OF STAFF: (Accused), you are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

Charge:

Specification:

CMDT/COS: You do not have to make any statement regarding the offense(s) of which you are accused or suspected and any statement made by you may be used as evidence against you.

CMDT/COS: You are advised that a captain's mast is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by court-martial do not apply at captain's mast.

CMDT/COS: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing.

CMDT/COS: Do you understand this statement and do you understand the rights explained therein?

ACC: _____

CMDT/COS: Do you have any questions about your rights?

ACC:

WITNESSES (if applicable)

CMDT/COS: [To witness (if any are present)] What can you tell me about the accused's involvement in (this/these) offense(s)?

WIT: _____

OR

CMDT/COS: [To witness(s) who has/have previously provided written statement(s) when accused and CMDT/COS both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: _____

CMDT/COS: Do you have anything to add to or change in your statement?

WIT: _____

CMDT/COS: (To accused) Would you like me to ask any further questions of this witness?

ACC: _____

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QUESTION ACCUSED/ACCUSED STATEMENT

CMDT/COS: (After all witnesses are questioned) I have before me the following evidence that I will consider:

(Evidence)

Have you been given the opportunity to examine the evidence?

ACC: _____

CMDT/COS: (If the answer is "no," offer the accused the opportunity to examine the evidence.)

CMDT/COS: Is there anything you wish to offer? Anything you wish to say? (If the answer is "yes," permit the accused the opportunity to call his/her witnesses, make a personal statement in defense, and present other evidence.)

ACC: _____

CMDT/COS: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: _____

CMDT/COS: Is there anything you wish to offer that would lessen the seriousness of (this/these) offense(s) or mitigate them?

ACC: _____

CHAIN OF COMMAND COMMENTS

CMDT/COS: (To CoC) What can you tell me about (accused's name) performance of duty?

WIT: _____

CMDT/COS: (To accused) Is there anything else you would like to present?

ACC: _____

PUNISHMENT

CMDT/COS: I impose the following punishment:

Restriction Maximum: 60 days (45 days if combined with extra duties) Awarded: _____

Extra Duty Maximum: 45 days Awarded: _____

Correctional Custody Maximum: 30 days. (E-3 and below only) Awarded: _____

Reduction in paygrade. Awarded: _____

Forfeiture Maximum of 1/2 of 1 months pay for 2 months. Awarded: _____

Admonition. Awarded: _____

Reprimand. (Oral or written; officers must be reprimanded in writing) Awarded: _____

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CMDT/COS: My decision to impose this punishment was based on my determination that you committed the offenses of:

Charge:

Specification:

APPEAL RIGHTS

You are advised that you have the right to appeal this punishment to the Vice Chief of Naval Operations. Your appeal must be made within a reasonable time—which is normally 5 days. Following this hearing, the Legal Office will advise you more fully of this right to appeal. Do you understand?

ACC: _____

CMDT/COS: You are dismissed.

SAMPLE