From: Commandant of Midshipmen

Subj: ADMINISTRATIVE PERFORMANCE AND CONDUCT SYSTEM

Encl: (1) Revised Record of Changes
(2) Revised pages 3-7 through 3-9
(3) Revised pages 5-2 and 5-3

1. Purpose. To publish change 4 to the basic instruction.

2. Action
   a. Remove Record of Change page of the basic instruction and replace with enclosure (1).
   b. Remove pages 3-7 through 3-9 of the basic instruction and replace with enclosure (2).
   b. Remove pages 5-2 and 5-3 of the basic instruction and replace with enclosure (3).
   c. Enclosures (1) through (3) have been incorporated into the basic instruction and posted to the website.

R. L. SHEA
By direction

Distribution:
Non-Mids (Electronically)
Brigade (Electronically)
<table>
<thead>
<tr>
<th>CHANGE NUMBER</th>
<th>DATE OF CHANGE</th>
<th>DATE ENTERED</th>
<th>BY WHOM</th>
</tr>
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<tr>
<td>CH-1</td>
<td>4SEP14</td>
<td>4SEP14</td>
<td>JJK</td>
</tr>
<tr>
<td>CH-2</td>
<td>10APR15</td>
<td>10APR15</td>
<td>JJK</td>
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<td>CH-3</td>
<td>23APR15</td>
<td>23APR15</td>
<td>SDH</td>
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<tr>
<td>CH-4</td>
<td>APR 29 2015</td>
<td>APR 29 2015</td>
<td>JJK</td>
</tr>
</tbody>
</table>
(2) The Awarding Authority will direct that military and civilian witnesses who are subject to Navy authority and request that other witnesses not discuss their statement or testimony with other witnesses or with persons who have no official interest in the proceedings until the case is closed.

i. Observers. At the adjudicating authority’s discretion, Midshipmen may observe conduct adjudications for educational purposes. In general Midshipmen who have a familiar relationship with the accused Midshipman shall not be observers, in that their involvement with the accused is likely to impede their ability to view the adjudication objectively. Midshipmen Conduct Officer are responsible for:

(1) Seeking permission from the adjudicating authority for observers to be present prior to each adjudication.

(2) Seeking guidance on the number and kind of observers (e.g., out of company MIDN only) allowed at the adjudication.

(3) Organizing the observers for the adjudications.

j. Adjudicative Hearing Process. The following format should be followed during all adjudicative hearings:

(1) The accused Midshipman will report to the Awarding Authority by stating name and rank.

(2) The accused Midshipman will be provided the opportunity to review any new evidence that was forwarded to the Awarding Authority.

(3) The accused Midshipman will be informed of his/her right to present witnesses and evidence on his/her own behalf. The accused Midshipman or the Awarding Authority may call relevant witnesses to testify on the merits of the accusation if documentary evidence alone does not adequately establish the facts necessary to make a finding.

(4) The accused Midshipman will be given an opportunity to present up to three character witnesses to speak on their behalf. These witnesses should be members of the Brigade or the USNA faculty/staff. Any other character witnesses should be approved by the Commandant’s Conduct Officer or Legal Advisor before appearing at a hearing.

(5) During the hearing, if the Awarding Authority suspects or identifies that a higher-level offense or an honor offense may have been committed, the hearing will be recessed and the matter promptly referred to the Commandant’s Conduct Officer, Legal Advisor, or Honor Staff. The accused Midshipman will not be asked to answer any further questions or make a statement of any kind.

(6) If it is determined that the accused Midshipman is not the only Midshipman involved in the incident and it appears that other Midshipmen should be charged for their actions, the Awarding Authority may choose from the following two options:

(a) Hold the adjudication in abeyance. If the Awarding Authority suspects that further investigation may reveal information which could affect the finding for the accused Midshipman, the case shall be reopened for further investigation.

(b) Continue the adjudication. If the Awarding Authority does not suspect that further investigation will significantly affect the finding
for the accused Midshipman, the adjudication will continue and an investigation will be opened following the adjudication to determine the involvement of the other Midshipmen.

(7) If a determination of guilt is reached, extenuating and mitigating circumstances will be considered prior to awarding punishment. Following the awarding of punishment, the Awarding Authority will ensure the guilty Midshipman fully understands the punishment that has been awarded.

k. Post-Adjudication Procedures

(1) Minor-level Offenses. Immediately following the adjudication the entire adjudication package will be given to the Company Conduct Officer who will update the Form-2 in MIDS to reflect the completion of the adjudication and awarded punishment and, if applicable, ensure the adjudicated Midshipman reports to Main Office to fill out the Midshipman’s Acknowledgement And Award Of Restriction Form (TAB G) on the day of award. The original form is to be maintained by the adjudicated Midshipman and a copy of it shall be provided to the Commandant’s Conduct Officer. A Restriction Card (TAB H) will also be filled out in Main Office at the same time. The Company Conduct Officer will ensure restriction begins the day following the adjudication, or if deferred, on the day to which restriction was deferred. The entire adjudication package will remain with the Midshipman’s performance jacket in company area.

(2) Major-level Offenses. Immediately following the adjudication the entire adjudication package will be given to the Battalion Conduct Officer who will update the Form-2 in MIDS to reflect the completion of the adjudication and awarded punishment and, if applicable, ensure the adjudicated Midshipman reports to Main Office to fill out the Midshipman’s Acknowledgement And Award Of Restriction Form (TAB G) on the day of award. The original form is to be maintained by the adjudicated Midshipman and a copy of it shall be provided to the Commandant’s conduct Officer. A Restriction Card (TAB H) will also be filled out in Main Office at the same time. The Battalion Conduct Officer will ensure restriction begins the day following the adjudication, or if deferred, on the day to which restriction was deferred. If the Midshipman was retained the Battalion Conduct Officer will immediately forward the adjudication script to the Commandant’s Conduct Officer. If the Midshipman was forwarded for separation the Battalion Conduct Officer will immediately forward the PIR with its enclosures (TAB E shows an example), the United States Naval Academy Administrative Performance System Acknowledgment And Waiver Of Military Suspect’s Rights, Investigation And Hearing Rights (TAB C shows an example), the Notification Of Potential Reimbursement For Advanced Education (for 1/C and 2/C MIDN only) (TAB D shows an example) and the Defense Service Office Contact Information form (TAB F shows an example) to the Commandant’s Conduct Officer for further processing.

NOTE: If the Battalion Officer delegates a Major-level offense to a Company Officer to adjudicate, the Company Conduct Officer shall be responsible for complying with this paragraph.

(3) 6K-level Offenses (and Major-level Offenses adjudicated by the Deputy Commandant or Commandant of Midshipmen). Immediately following the adjudication the Commandant’s Conduct Officer will update the Form-2 in MIDS and compose a conduct probation letter if conduct probation was recommended/awarded (TAB I). The Brigade Conduct Officer will ensure the adjudicated Midshipman reports to Main Office to fill out the Midshipman’s Acknowledgement and Award Of Restriction Form (TAB G) on the day of award. The original is to be maintained by the adjudicated Midshipman and a copy of
it shall be provided to the Commandant’s Conduct Officer. A Restriction Card (TAB H) will also be filled out at the same time. The Brigade Conduct Officer will ensure restriction begins the day following the adjudication, or if deferred, on the day to which restriction was deferred. The entire adjudication package will be forwarded to the Commandant’s Legal Advisor for filing or further processing. The Brigade Conduct Officer will ensure the adjudicated Midshipman writes his or her corresponding XYZ case. The Brigade Conduct Officer shall not require XYZ cases to be written for conduct cases that the CMEO Officer or SAPR Program Manager are involved in.

3.4 Request for Reconsideration (Appeal)

a. A Request for Reconsideration is an appeal to a Reviewing Authority.

   (1) Reviewing Authorities are as follows:

      (a) Commandant - for Major- or 6K-level offenses adjudicated by the Deputy Commandant.

      (b) Deputy Commandant - for Major-level offenses adjudicated by subordinates.

      (c) Battalion Officer - for Minor-level offenses adjudicated by subordinates.

   (2) A Midshipman may appeal the disposition of his/her case only on the following bases:

      (a) A finding of guilt is unjust.

      (b) The punishment awarded is disproportionate to the offense(s) committed.

      (c) Substantial errors existed in the adjudicative proceedings such that the Midshipman’s rights were violated.

b. Appeal of a Guilty Finding. Only Midshipmen who plead “not guilty” may request reconsideration of a finding of “guilty.” An appeal will need to indicate that there was not sufficient evidence to substantiate the charge by a preponderance of the evidence.

c. Appeal of the Awarded Punishment. Regardless of plea, any Midshipman who considers the awarded punishment disproportionate to the offense(s), may request reconsideration of the award itself. Such an appeal should address whether the level of the original punishment awarded was an abuse of discretion under the circumstances of a given case. An assigned punishment should not be changed simply because the Reviewing Authority would have awarded a different punishment.

d. Appeal Based on Errors or Irregularities in an Adjudicative Hearing. Procedural errors or irregularities in adjudicative hearings will be grounds to invalidate such proceedings only in those cases where the errors or irregularities substantially prejudiced the accused Midshipman and cannot subsequently be cured. If substantial errors in the proceedings are detected, the Reviewing Authority may direct that the investigation be reopened and additional matters be considered or errors corrected or remedied. The accused Midshipman is responsible for alleging substantial errors within the time period described in paragraph 3.4d(4) below.
5.4 **Preliminary Investigative Officer (PIO)**

a. The PIO shall:
   
   (1) Conduct a fair and impartial inquiry into the facts and circumstances surrounding the alleged misconduct. The PIO should seek assistance from the Conduct Officer and Legal Advisor as required, and request the assignment of an assistant PIO or legal counsel, in more complex cases, if deemed necessary.

   (2) Complete and serve the Military Suspect’s Acknowledgment and Waiver of Rights Form (TAB C), Notification Of Potential Reimbursement For Advanced Education (this pertains to First and Second Class Midshipmen only) (TAB D), Defense Service Office Contact Information Form (TAB F) and inform the accused Midshipman of the requirement to submit a plea within 24 hours of service.

b. Further instructions for the PIO can be found in Chapter 4.

5.5 **Company/Battalion Conduct Officer**

a. The Company/Battalion Conduct Officer shall:

   (1) Act as a PIO for Minor-level conduct offenses that require the collection of materials or evidence.

   (2) Schedule, set up, and attend Minor-level adjudications.

   (3) Organize Midshipmen observers for Minor- and Major-level adjudications at the adjudicating authority’s discretion.

b. After adjudication by the assigned Awarding Authority the Company/Battalion Officer shall:

   (1) Ensure completion of the following forms associated with punishment awarded at adjudication: Midshipman Acknowledgement of Restriction Form (TAB G) and the Restriction Card (TAB H).

   (2) For Minor-level cases: Ensure that the Form-2 is immediately updated in MIDS and the conduct package is filed in the company files.

   (3) For Major-level cases: Ensure that the Form-2 is immediately updated in MIDS and the conduct package is forwarded to the Commandant’s Conduct Office for filing or further processing.

5.6 **Brigade Conduct Officer.** The Brigade Conduct Officer shall:

a. Assist the Commandant’s Conduct Officer in training all Company Conduct Officers to properly execute their respective duties under this instruction. Additionally, the Brigade Conduct Officer will train the Battalion and Company Conduct Officers regarding the operation of MIDS as it pertains to conduct offenses.

b. Act as a liaison between the Conduct Office and Battalion and Company Conduct Officers to enhance consistency in the administration of the Conduct System within the Brigade, thereby enhancing good order and discipline at the Naval Academy.
c. For Commandant of Midshipmen and Deputy Commandant of Midshipmen adjudications ensure the accused Midshipman and the accused Midshipman’s Midshipman Chain of Command (Squad Leader, Platoon Commander, Company Commander and Battalion Commander) are prepared for the adjudication and are confirmed to be present for the adjudication.

d. Set up the Commandant’s Conference room for the adjudication and for Commandant of Midshipmen adjudications/hearings ensure that six (6) observers are present (1 Midshipman present from each Battalion and 1 Midshipman present from each class).

e. Prepare XYZ case studies. The Brigade Conduct Officer is instrumental in providing feedback to the Brigade of Midshipmen in the form of XYZ case studies which outline cases by describing the summary of events, offenses that were charged, summary of adjudication and punishment, and the final disposition of the case. The Brigade Conduct Officer shall:

(1) Assign a due date to the adjudicated Midshipman for his or her XYZ case, ensure the adjudicated Midshipman knows to follow the XYZ Case example format posted on the Conduct Website, collect the XYZ case at the time it is due and edit it prior to submitting it to the Commandant’s Conduct Officer for approval.

(2) Ensure Battalion and Company Conduct Officers are alerted when new XYZ cases are posted on the Conduct Website to guarantee widest dissemination of new XYZ cases.

f. Organize Midshipmen observers for Major- and 6K-level adjudication at the Deputy Commandant’s discretion.

5.7 Commandant’s Conduct Officer

a. Prior to forwarding a Major-level conduct offense case to the Awarding Authority, the Commandant’s Conduct Officer shall:

(1) Ensure that the PIO serves the Form-2 on the accused Midshipman, informing the accused of the requirement to submit a plea within 24 hours of service, and ensure that the PIO completes the Military Suspect’s Acknowledgement and Waiver of Rights Form, Defense Service Office Contact Information Form and, as applicable, the Notice of Potential Reimbursement.

(2) Provide assistance to the PIO as necessary, to include obtaining reports from outside agencies.

(3) Coordinate with the PIO to ensure timely completion of the PIR.

(4) Review all available documentation for completeness and accuracy.

(5) Ensure the accused Midshipman’s Company and Battalion Officers are kept informed of investigative and adjudicative proceedings.

b. If a hearing to adjudicate a Major-level conduct offense is contemplated, the Conduct Officer shall:

(1) Provide the accused Midshipman an opportunity to review the materials provided to the Awarding Authority, to include the PIR with enclosures, chain of command comments, and character or material witness statements.