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ADJUTANT GENERAL'S DEPARTMENT
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SECTION I - GENERAL

1. Authority.

- a. West Virginia Code of Military Justice, Chapter 15, Article 1E, Section 1 et seq.
- b. Title 32, United States Code, Sections 326-333. (32 U.S.C.A. 326-333).
- c. Title 10, United States Code, Sections 801-940. (10 U.S.C.A. 801-940).
- d. Manual for Courts-Martial, United States, 1969 (Revised Edition).

2. Purpose. The purpose of this regulation is to implement the West Virginia Code of Military Justice and to acquaint personnel of the West Virginia Army and Air National Guard with the procedures necessary to ensure the impartial dispensation of military justice.

3. Applicability. The administration of military justice in the West Virginia Army and Air National Guard shall be governed by the provisions of the West Virginia Code of Military Justice, by these regulations, and by the Manual for Courts-Martial, United States, 1969, as amended and supplemented from time to time, except insofar as the provisions of such manual may be inconsistent with the West Virginia Code of Military Justice or inconsistent with, or modified by these regulations.

4. Definitions. For definitions, see Chapter 15, Article 1E, Section 2, West Virginia Code of Military Justice.

5. Abbreviations. Abbreviations used in these regulations are interpreted as follows:

WVCMJ - West Virginia Code of Military Justice.

MCM - Manual for Courts-Martial, United States, 1969 (Revised Edition).

UCMJ - Uniform Code of Military Justice.

SECTION II - JURISDICTION

6. Jurisdiction of Courts-Martial in General.

a. The jurisdiction of courts-martial is entirely penal or disciplinary. They have no power to adjudge the payment of damages or to collect private debts.

b. The jurisdiction of courts-martial does not, in general, depend on where the offense was committed. Similarly, the jurisdiction of a court-martial with respect to offenses against military law is not affected by the place where the court acts.

c. As to persons amenable to trial by court-martial, see WVC MJ. Sections 3 and 4.

d. As to jurisdiction for contempts, see WVC MJ, Section 51.

e. Courts-martial shall have exclusive jurisdiction of purely military offenses. But a person subject to the WVC MJ is, as a rule, subject to the law applicable to persons generally, and if by an act or omission he violates the WVC MJ and the local criminal law, the act or omission may be made the basis of a prosecution before a court-martial or before a proper civil tribunal, and in some cases before both. However, jurisdiction shall not be extended to crimes not included in Chapter 15, Article 1E, WVC MJ.

7. Reciprocal Jurisdiction. Commanders in one force of the state military forces are authorized to convene courts-martial for the trial of members of another force only when specifically empowered by The Adjutant General.

8. Jurisdiction of General Courts-Martial.

a. Subject to paragraph 7, general courts-martial have the power to try persons subject to the WVC MJ for any offense made punishable by the WVC MJ and may adjudge any punishment authorized by WVC MJ, Section 19.

b. General courts-martial convening authority shall only be exercised by the Governor or The Adjutant General, unless such authority be specifically delegated to subordinate commanders.

9. Jurisdiction of Special Courts-Martial.

a. Subject to paragraph 7, special courts-martial shall have jurisdiction to try persons subject to the WVC MJ except commissioned officers and may adjudge any special courts-martial authorized by WVC MJ, Section 20.

b. Special courts-martial convening authority shall only be exercised by the Governor or The Adjutant General, unless such authority be specifically delegated to subordinate commanders,

10. Jurisdiction of Summary Courts-Martial.

a. Subject to paragraph 7, summary courts-martial shall have jurisdiction to try enlisted persons subject to the WVC MJ for any offense made punishable by the WVC MJ and may adjudge any punishment authorized by WVC MJ, Section 21.

b. Summary courts-martial convening authority may be exercised by the following commanders:

(1) In the Army National Guard:

- (a) Any person authorized by regulation to convene a general or special court-martial.
- (b) Group commanders.
- (c) Battalion commanders.
- (d) Squadron commanders.
- (e) Headquarters commanders.
- (f) Company/troop/battery commanders.
- (g) Commander of the 146th Med Det (Hel/Amb).
- (h) Commander of the 152d MP Det.
- (i) Any commander not listed in subsections (a) through (h) above may convene a summary court-martial only upon the specific written authority of the State Adjutant General.

(2) In the Air National Guard:

- (a) Any person authorized by regulation to convene a general or special court-martial.
- (b) Commander, WVANG.
- (c) Group/Air Commanders.
- (d) Squadron Commanders.
- (e) Flight Commanders.

SECTION III - NONJUDICIAL PUNISHMENT

11. Authority. Under the authority of Section 16, WVCMJ, any commander having authority to convene general, special or summary courts-martial may, for minor offenses without the intervention of a court-martial, impose and execute disciplinary punishments as set forth in Appendix I to this regulation.

12. Minor Offenses. Whether an offense may be considered "minor" depends upon its nature, the time and place of its commission, and the person committing it. Generally speaking, the term includes misconduct not involving moral turpitude or any greater degree of criminality than is involved in the average offense tried by summary court-martial.

13. Nonpunitive Measures. Section 16, WVC MJ and the provisions set forth herein do not apply to, include, or limit the use of those nonpunitive measures that a commander is authorized and expected to use to further the efficiency of his command or unit, such as administrative admonitions, reprimands, exhortations, disapprovals, criticism, censures, reproofs and rebukes, written or oral, not intended or imposed as punishment for a military offense. Section 16, WVC MJ does not deprive a commander of the authority to make use of admonition and reprimand, not as a penalty but as a purely corrective measure, more analogous to instruction than to punishment, in the strict line of his duty to create and maintain efficiency.

14. Punishments.

a. During duty status nonjudicial punishment under Section 16, WVC MJ may be imposed if the punishment authorized by that section is of a character which can be imposed on members of the state military forces in and during their duty status, except as to fines and forfeitures, and reductions and reprimands, which may be imposed after conclusion of duty status for offenses committed during duty status. No punishment which tends to degrade the grade of the person on whom the punishment is imposed may be imposed on noncommissioned officers. (See Appendix I.)

b. Nonjudicial punishments may be imposed during annual training status, not extending beyond the last day thereof except as to fines and forfeitures, and reductions and reprimands which may be imposed after annual training for offenses committed during annual training.

15. Right to Demand Trial. No nonjudicial punishment under the provisions of Section 16, WVC MJ may be imposed for an offense punishable under said section if the accused has, prior to the imposition of such punishment, demanded trial by court-martial in lieu of such disciplinary punishment. An election to accept disciplinary punishment constitutes a waiver of the right to demand trial. A demand for trial does not require preferring, transmitting, or forwarding of charges, but punishment may not be imposed under Section 16, WVC MJ while the demand is in effect.

SECTION IV - PRETRIAL PROCEDURE

16. Preparation of Charge Sheet.

a. Date on first page of charge sheet. (See Appendix I.)

(1) Place: In this space there should be inserted only the place where the accused's unit is located at the time of preferring the charges. The name of the unit should be omitted. For example, if the unit is located in Huntington, insert only the words "Huntington, West Virginia". If the unit is located at Fort Pickett, insert only the words "Fort Pickett, Virginia".

(2) Grade or Rank. Note that both the rank and the pay grade must be included, especially when there is more than one pay grade for the particular rank.

(3) Organization and Armed Force. Insert only the name of the accused's unit and armed force. The address of the unit should be omitted. The armed force is "West Virginia Army National Guard" or "West Virginia Air National Guard".

(4) Abbreviation: Note that the abbreviations may and should be used on page 1 of the Charge Sheet, particularly in the section on witnesses. The prohibition against abbreviations applies only to the charges and specifications proper, and not the remainder of the Charge Sheet.

(5) Blanks Not Applicable: When the word "none" is appropriate in a particular blank, it should be entered therein. Every blank should be filled out. This is particularly important in the section on restraint.

b. Charges and Specifications. The instructions for drafting charges and specifications in Appendix 6, MCM, should be followed when applicable. In particular, the following principles should be adhered to:

(1) Abbreviations. Dates and times should be written in Arabic numerals, and the designation of organization or command may include numerals. The armed force, namely "West Virginia Army National Guard" or "West Virginia Air National Guard" may be abbreviated "WVARNG" and "WVANG". Otherwise, abbreviations should not be used in specifications.

(2) Numbering of Charges and Specifications. When there is more than one charge, the charges should be numbered, using Roman numerals, I, II, III, IV, etc. When there is more than one specification under a charge, the specification under that charge should be numbered, using Arabic numerals, 1, 2, 3, etc. If there is but one charge, it should not be numbered, and if there is but one specification under a particular charge, it should not be numbered.

(3) Designation of Charges. Except for certain offenses, all charges should be laid under the applicable sections of the WVMJ. For example, in the case of absence without leave, the charge should be: Violation of the West Virginia Code of Military Justice, Section 87. No reference to the UCMJ or to these regulations is necessary.

(4) Name and Description of the Accused. The name of the accused as stated in the specification should include his rank and where there is more than one pay grade for the particular grade, his pay grade. The name of the accused should be also accompanied by his organization and armed force. The service number of the accused is not alleged in the specification. In the ordinary case of an enlisted person, for example, the specification would read, In that Private John J. Smith, Company D, 1092d Engr Bn, WVARNG, did..., etc.

(5) Time and Place of Offense. The time and place of the commission of the alleged offense should be stated in the specification with sufficient precision to identify the offense and enable the accused to understand what particular act or omission he is called upon to defend. It is proper pleading to allege that a particular offense occurred "on or about" a certain day, or if it is necessary, to be more explicit as to the time, "at or about" a certain hour. For example, in the case of absence without leave, it is proper to allege that the accused failed to go to his place of duty "on or about 2 May 1987 at or about 0800 hours" and remained so absent until "on or about 2 May 1987 at or about 1200 hours."

(6) Alleging Separate Offenses. Each alleged offense should be set forth in a separate specification. Thus, in the case of absence without leave, each unauthorized absence should be alleged in a separate specification under one charge.

(7) Forms for Specifications. It is suggested that the forms for specifications set forth in Appendix 6c, MCM, be used in drafting specifications whenever possible.

c. Specimen Charges. The following specimen charge is set forth as an example which incorporates the foregoing principles of drafting charges and specifications:

"CHARGE: Violation of the West Virginia Code of Military Justice, Section 87.
SPECIFICATION: In that Private First Class John J. Smith, WVARNG, 1092d Engr Bn, did, on or about 2 May 1987 at or about 0800 hours, without proper authority fail to go at the time prescribed to his place of duty at which he was required to be, to wit: at unit training assembly of Company D, 1092d Engr Bn at St. Albans, West Virginia."

d.. Informing Accused of Charges. Prior to forwarding the charges, the immediate commander will inform the accused of the charges against him and complete and sign the certificate to that effect on page 3 of the Charge Sheet. When, because of the unavailability of the accused, it is impractical to comply with the requirement, a report of the circumstances will be included in the letter forwarded with the charges (MCM, par 32f).

e. Signing and Swearing to Charges. The oath to the charges must be executed before a person authorized by Section 126, WVCMJ to administer oaths.

f. Action by Officer Exercising Summary Courts-Martial Jurisdiction:

(1) Date of Receipt. Immediately upon receipt of sworn charges against a member of his command, the officer exercising summary courts-martial jurisdiction will cause the hour and date of receipt to be entered in the space provided on page 3 of the Charge Sheet (MSM, par 33b).

(2) Informing Accused of Charges. If, when charges are received by the officer exercising summary courts-martial jurisdiction it appears that the accused has not been advised of the charges against him, the action prescribed in part 6 will be taken promptly (MSM, par 33c).

(3) Alterations. The officer exercising summary courts-martial jurisdiction will make a preliminary examination of the charges and allied papers to determine whether the specifications are laid under proper punitive articles and are supported by the expected evidence. Obvious errors may be corrected and the charges may be redrafted over the accuser's signature, provided redraft does not include any person, offense or matter not fairly included in the charges as preferred. Corrections and redrafts should be initialed by the officer making them (MCM, par 33d).

(4) Nonjudicial Punishment. The officer exercising summary courts-martial jurisdiction should indicate in the space provided on page 4 of the Charge Sheet the proper information as to nonjudicial punishment.

(5) Investigation. If the charges are so serious that it may be appropriate to forward them with a recommendation for trial by general courts-martial, the officer exercising summary courts-martial jurisdiction will appoint an officer to investigate the charges in accordance with Section 35, WVC MJ.

(6) Disposition of Charges by Trial. Unless competent superior authority has directed otherwise, the officer exercising summary court-martial jurisdiction may, as a result of preliminary inquiry or formal investigation, dismiss all or part of any charges that have been preferred. If he determines that some punishment should be adjudged and that trial by summary court-martial is appropriate, he should complete the endorsement on page 3 of the Charge Sheet in the prescribed manner and transmit the charges and allied papers to the summary court-martial. If he is so empowered and determines that trial by special court-martial is appropriate, he should complete the endorsement in the prescribed manner and transmit the charges and allied papers to the trial counsel of the court.

(7) Forwarding Charges. When trial by a special or general court-martial is deemed appropriate and he is not empowered to convene a court for a trial of the case, the officer who exercises summary court-martial jurisdiction will forward the charges and necessary allied papers (ordinarily through the chain of command) to the officer exercising the appropriate kind of court-martial jurisdiction in accordance with MCM, par 33i.

(8) Service of Charges on Accused. Prior to the trial, a copy of the charge or charges must be served on the accused. Service of the charges and written order must be accomplished in the manner prescribed by paragraph 18, and the person who served the charges and the written order shall complete and sign the return of service on the bottom of page 3 of the Charge Sheet.

17. Service of Charges.

a. Service of charges referred to trial by a general or special court-martial will be made by the trial counsel in the manner set forth in Section 38, WVCMJ. Service of charges referred to trial by a summary court will be made by the summary court officer by personally presenting a copy of the Charge Sheet to the accused. At the same time or at any subsequent time the trial counsel or summary court will notify the accused as to the time and place of trial and order him to be present (See Figure 2).

b. Convening Orders. Courts-martial are created by a convening order issued by the convening authority. The convening order shall designate the kind of court, the place and time it is to meet, members of the court, and, when appropriate, the military judge and members of the prosecution and defense. The provisions of par. 36, 37, 38, MCM should be followed (See Figure 3).

c. Reference for Trial. Charges shall be referred for trial by courts-martial in accordance with the provisions of Chapter VII, MCM.

18. Apprehension and Restraint.

a. Section 8-11, WVCMJ and Chapter V, MCM will be followed as far as they are applicable.

b. Pretrial confinement in a place other than a military installation.

(1) Pretrial confinement in a place other than a military installation will be authorized only in the case of an accused who failed to obey an order to appear before a court-martial for trial. Pretrial confinement is not authorized without the prior approval of The Adjutant General. Facts concerning the proposed arrest of an individual will be forwarded in letter form and will include the information required in para 25 herein.

(2) After proper authorization the military judge of a general or a special court-martial or the president of a special court-martial without a military judge; or the summary court officer may issue a warrant (See Figure 5), directed to the sheriff of any county or to any law enforcement officer to apprehend the accused and bring him before the court-martial for trial.

(3) The military judge of general or a special court-martial, or the president of a special court-martial without a military judge; or the summary court officer will set the amount of bail, not to exceed four times the maximum fine which may be imposed by the particular court-martial. Bail must be furnished in the form of:

(a) A bond with a competent surety company or two individuals having an unencumbered title in fee in real property (See Figure 6).

(b) In cash deposited with the bonding officer who will be responsible for its safe keeping.

(4) In accordance with Section 9, WVCMJ, any military officer is hereby authorized to summarily apprehend any person subject to the West Virginia Code of Military Justice who is absent without leave from the state military forces and deliver him into the custody of the state military forces.

SECTION V - TRIAL PROCEDURE

19. Counsel.

a. Trial Counsel. In general and special courts-martial, trial counsel shall prosecute in the name of the State of West Virginia. He will discharge the duties imposed upon him by WVCMJ and by MCM insofar as they are applicable.

b. Defense Counsel. In general and special courts-martial, defense counsel will diligently represent the accused and fully advise him of all rights, following the requirements of the WVCMJ and the MCM insofar as they are applicable. His advice should include the accused's right to have appellate counsel in event of review by the State Judge Advocate or a board of review.

20. General Trial Procedure.

a. The procedure, including methods of proof in cases before military courts, courts of inquiry and other military tribunals shall be governed by the provisions of the WVCMJ, the MCM as amended and supplemented from time to time, and by the principles of law and the rules of evidence generally recognized and applicable in the trial of criminal cases in the courts of the State of West Virginia.

21. Summary Court-Martial Procedure for Summary Court Officers.

a. A Summary Court Officer in the trial of cases referred to him for trial is encouraged to refer to this regulation, WVCMJ, MCM, and particularly to DA Pam 27-7, using it as a guide where applicable.

b. Pretrial Duties of Summary Court Officers.

(1) Examine the Charge Sheet for any errors in preparation and determine whether the charges are sworn and whether the endorsement is correct.

(2) Determine whether the Summary Court Officer is free of any conflict in interest which would impair a fair and impartial trial. If there is such a conflict he should notify the convening authority.

(3) Nonjudicial punishment is provided for by Section 16, WVC MJ. The portion of the Charge Sheet pertaining to Article 15, UCMJ should be changed to Section 16, WVC MJ and the blank completed.

(4) If the charges have not been served, the Summary Court Officer will serve a copy of the Charge Sheet on the accused, together with a written order of the convening authority to appear before the court. He should also inform the accused as to the date, time and place of trial, at which time the accused is to be present with any witnesses he may have and retain legal counsel at his own expense, if he so desires.

(5) Familiarize himself with the applicable law and plan an orderly procedure.

(6) Notify all known witnesses of the date, time and place of trial and arrange for subpoena of witnesses where necessary.

c. Trial Procedure:

(1) The trial should be conducted with dignity and decorum.

(2) The accused is innocent until proven guilty beyond reasonable doubt by competent evidence properly presented before the summary court.

(3) The procedure shown in chapters 2, 3, 5, 6 and 7, DA Pam 27-7 is recommended.

(4) The accused has the right to object to trial by summary court-martial. If he so objects, the charges will be returned to the convening authority with the appropriate endorsement.

(5) The accused has the right to examine all government witnesses and to present evidence on his own behalf through witnesses or documents. He has the right to remain silent or to testify in his own behalf.

d. Findings. After all of the evidence has been presented, the Summary Court Officer will make separate findings of guilty or not guilty to each charge and to each specification or guilty to a lesser included offense.

e. Sentence:

(1) If a finding of guilty has been made, the Summary Court Officer will:

(a) Furnish the accused with a copy of the Charge Sheet and ask him if the personal data appearing on page 1 of the Charge Sheet, including data as to restraint, are correct. If the accused alleges that any of the data are incorrect, the Summary Court Officer must determine the issue after obtaining any official verification available.

(b) Receive and consider any evidence of previous convictions, and determine from the accused and any official source if the data as to previous convictions is correct.

(c) Ask the accused whether he wishes to call any witnesses in mitigation or extenuation.

(d) Receive any documents which the accused wishes to offer in mitigation or extenuation (See MCM, par 75c(1)).

(e) Advise the accused again as to his right to testify or remain silent or to make an unsworn statement.

(f) If the accused elects to testify under oath, the Summary Court Officer should swear the accused or remind him that he is still under oath, if he has previously been sworn. The Summary Court Officer may cross-examine the accused after making a sworn statement. If the accused elects to make an unsworn statement, the Summary Court Officer should receive the statement.

(g) If necessary and appropriate, call rebuttal witnesses to matters in mitigation and extenuation.

(h) After receiving all of the evidence, announce an appropriate sentence within the limitations of Section 21, WVC MJ.

(i) Enter the sentence in the space provided in the Charge Sheet, page 4.

f. Post-Trial Duties.

(1) Complete the Charge Sheet.

(a) Line out and initial on page 1 the names of any witnesses not used.

(b) Enter names of any additional witnesses used.

(c) On page 4, complete and review the record of trial and sign the record.

(d) If the accused has been so advised, answer in the affirmative the question, "Was the accused advised in accordance with paragraph 79d, MCM?" See also Section 21, WVC MJ.

(2) Report the results of trial to the convening authority, the immediate commander of the accused, the officer in command of the facility where accused was in pretrial confinement, if appropriate, and any persons required by the convening authority.

(3) Return the file to the convening authority with any recommendation in writing for clemency, if appropriate.

(4) Avoid unnecessary delay. The accused is entitled to a speedy trial.

SECTION VI - POST-TRIAL PROCEDURE

22. Sentences.

a. The punishment which a court-martial may direct may not exceed the limits hereinbefore prescribed.

b. During periods of annual training and active state duty, a sentence of confinement may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces. However, confinement in a place under the control of the state military forces shall not in any event extend beyond the period the prisoner is in such duty status.

c. At any time, including periods of annual training and active state duty, a sentence to confinement may be carried into execution in a county jail within the State of West Virginia.

d. To execute a sentence of confinement in a county jail, the convening authority shall, after the sentence is approved by The Adjutant General, issue a warrant of commitment (See Figure 7) of the person so sentenced to the sheriff and/or warden of the appropriate jail, who shall forthwith execute said warrant and make a proper return to the convening authority.

23. Confinement Instead of Fine. A court-martial may impose a sentence to confinement for not more than one day for each dollar of the authorized fine.

24. Sentences of Confinement and forfeiture to be approved by The Adjutant General.

a. No pretrial confinement, sentence to confinement, or of forfeiture of pay and allowances shall be executed until it is approved by The Adjutant General. If sentence as approved includes imprisonment, the convening authority will not order it executed, but will forward a brief synopsis of the case together with a copy of the record of trial to The Adjutant General and include the following information concerning the sentenced individual:

- (1) Martial status.
- (2) Dependency status.
- (3) Effect of imprisonment on employment.
- (4) Comments of convening authority.

b. No sentence of confinement shall be ordered in any case where the accused was not represented by legal counsel at the trial.

c. If pretrial confinement or sentence to confinement, as applicable, is approved, the convening authority will be directed to order sentence executed or issued certificate of commitment.

25. Sentences of Dismissal, Dishonorable Discharge or Bad Conduct Discharge to be Approved by the Governor. No sentence of dismissal, dishonorable discharge or bad conduct discharge shall be executed until it is approved by the Governor.

26. Complete Record of Proceedings and Testimony if Bad Conduct Discharge Adjudged. A bad conduct discharge may not be adjudged by any special court-martial unless a complete written record of the proceedings and testimony before the court has been made. No such verbatim record of the proceedings and testimony before a special court-martial shall be made unless specifically authorized by The Adjutant General.

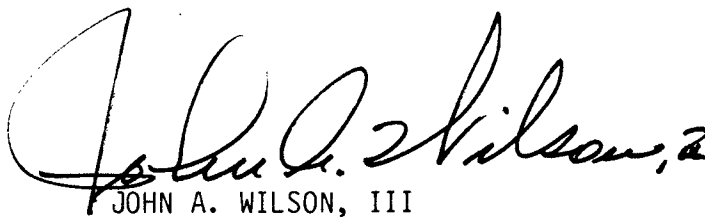
27. Disposition of Fines, Penalties and Proceedings of Courts-Martial.

a. Proceedings. Upon approval of the proceedings of a courts-martial by the convening authority, the original copy will be returned to the unit concerned for entering of necessary information to the Service Record. When the information has been transcribed to the Service Record and the sentence has been executed, the original copy of the complete record of the proceedings including all exhibits and testimony will be forwarded through channels to The Adjutant General by letter of transmittal, including any fines or a notation that the sentence has been executed.

b. Remittance of Fines and Penalties. Checks, drafts and money orders in payment of fines and penalties will be drawn to the order of the State of West Virginia and will be forwarded to The Adjutant General.

28. Review of Courts-Martial. Review of Courts-Martial shall be as prescribed in Sections 62-77, WVC MJ.

BY ORDER OF THE GOVERNOR:



JOHN A. WILSON, III
Major General, WVANG
The Adjutant General

APPENDIX I

NONJUDICIAL PUNISHMENT

Section I, General

1. Purpose and Scope.

This appendix implements Chapter 15, Article 1E, Section 16 of the Code of West Virginia, 1931, as amended (hereafter referred to as the West Virginia Code of Military Justice, or the "WVCMJ"). It includes the regulations promulgated pursuant to Chapter 15, Article 1E, Section 16, WVCMJ and prescribes certain requirements, policies, limitations and procedures for persons having the authority to impose nonjudicial punishment; for persons upon whom this punishment may be imposed; and for other persons who may take some action with respect to the proceedings. Accordingly, no action should be taken under the authority of Chapter 15, Article 1E, Section 16 of the WVCMJ without reference to and compliance with this appendix. Chapter 15, Article 1E, Section 16 of the WVCMJ shall be hereafter referred to as "Section 16".

Section II. Authority

2. Who may impose Nonjudicial Punishment.

a. Unless otherwise specified in this appendix any person having the authority by regulation to convene a general, special or summary court-martial, is authorized to impose nonjudicial punishment upon any person of his command.

b. Delegation. The authority given to persons identified in paragraph 2(a) of this section is an attribute of command and, except as provided in paragraph 2-2(b)(1), shall not be delegated.

(1) Any person authorized by regulation to exercise general or special court-martial jurisdiction may delegate his powers under Section 16, WVCMJ to any commissioned officer who, by virtue of his rank and assignment, exercises primary command authority over his unit or detachment in the WVARNG. Any delegation of authority pursuant to this subparagraph shall be by written order which shall also state the time period for which such delegation shall be in effect.

c. A delegation of Section 16 powers does not divest the person making the delegation of the power to exercise his Section 16 powers personally in any case in which he desires to act.

d. Only those persons empowered by regulation to convene general or special courts-martial shall have the authority to impose nonjudicial punishment upon an officer of his command.

3. Persons upon whom nonjudicial punishment may be imposed.

a. Military personnel of his command. Punishment may be imposed under Section 16, WVCMJ by those persons authorized by this appendix. For the purpose of Section 16 nonjudicial punishment, military personnel are considered to be "of the command" of a person authorized to impose Section 16 nonjudicial punishment if they are assigned to an organization commanded by him, or if they are affiliated therewith--by attachment, or detail, by order of proper authority.

b. Termination of status. Nonjudicial punishment may not be imposed upon an individual by a person authorized to impose nonjudicial punishment, after the individual ceases to be of his command by reason of transfer or otherwise. This is so even if Section 16 nonjudicial punishment proceedings have been instituted, so long as the proceedings have not resulted in the imposition of punishment prior to the time of the change in status. The person authorized to impose nonjudicial punishment who has instituted the proceedings may, in the case of such a change in status, forward the record of proceedings to the gaining commander for appropriate disposition.

c. Personnel of Army National Guard and Air National Guard. As a matter of policy, nonjudicial punishment should not be imposed by an officer of the Army National Guard upon Air National Guard personnel; nor should nonjudicial punishment be imposed by an officer of the Air National Guard upon Army National Guard personnel.

d. Minor offenses. Violations of, or failure to obey general orders or regulations may properly be considered as constituting minor offenses when the prohibited conduct is itself of a minor nature when considered apart from the fact that it is prohibited by a general order or regulation. However, punishment under Section 16, WVCMJ for minor offenses includes any act or omission constituting offenses under the punitive sections of the code (see Part X, Section 78-124, WVCMJ). Generally, the nature of an offense and the circumstances surrounding its commission are among the factors which must be considered in determining whether or not an offense is minor in nature.

e. Double punishment prohibited. Several minor offenses arising out of substantially the same transaction or conduct will not be made the basis of separate actions under Section 16, WVCMJ.

Section III. Policies Applicable.

4. Purposes of nonjudicial punishment; personal exercise in discretion in imposing nonjudicial punishment.

a. Purposes. A commander authorized by this appendix to impose nonjudicial punishment is expected to use other nonpunitive measures to the maximum extent possible in furthering the efficiency of his command without resorting to the

imposition of nonjudicial punishment. Resort to Section 16, WVCMJ is proper in all cases of minor offenses in which administrative measures are considered inadequate or inappropriate. Nonjudicial punishment may be imposed in appropriate case to--

(1) Correct educate and reform offenders who have shown that they cannot benefit by less stringent measures;

(2) Preserve, in appropriate cases, an offender's record of service from unnecessary stigmatization by record of court-martial conviction; and

(3) Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

b. Personal exercise of discretion. An officer authorized by regulation to impose Section 16, WVCMJ who is considering a case for possible disposition by him will exercise his own discretion in evaluating the case, both as to whether punishment should be imposed under Section 16 at all and, subject to the limitations contained in paragraph 7 of this appendix, shall determine the nature and amount of the punishment if it is to be imposed.

5. Relationship of nonjudicial punishment to nonpunitive measures.

a. Reduction in grade. Certain command officers in the WV Army and Air National Guard may impose reductions administratively upon enlisted personnel of their commands for inefficiency and other reasons. This authority, where it currently exists, exists apart from any authority they may have to impose a punitive reduction for misconduct under Section 16, WVCMJ. These two separate and distinct kinds of authority must not be confused. Administrative reduction authority shall not be utilized for punitive purposes. (See NGR 600-200.)

b. Reprimands and admonitions. An "admonition" is a warning, reminder or reproof given to deter repetition by the offender of the type of misconduct which resulted in the admonition and to advise him of the consequences that may flow from a recurrence of that misconduct. A "reprimand" is an act of formal censure which reproves or rebukes the offender for his misconduct. An admonition may be included in a reprimand. Commanding officers have authority to give admonitions or reprimands as an administrative nonpunitive measure. Persons authorized by regulation to impose Section 16 nonjudicial punishment have the authority to impose admonitions or reprimands as nonjudicial punishment. If an admonition or reprimand is imposed as a punitive measure under Section 16 nonjudicial punishment, then the requirements set forth in this appendix must be followed.

(1) A written administrative admonition or reprimand should contain a statement indicating that it has been given merely as an administrative measure and not as Section 16 nonjudicial punishment.

(2) Admonitions and reprimands imposed as punishment orally or in writing should be clearly stated to have been imposed as punishment under Section 16 nonjudicial punishment.

6. Reference to superior. Nonjudicial punishment should be administered at the lowest level of command permitted by this appendix and commensurate with the needs of discipline. However, after thoroughly considering the nature and circumstances of the offense and the age, previous record, maturity and experience of the offender, if a commander, authorized to impose Section 16, WVCMJ by this appendix, determines that his authority under Section 16 nonjudicial punishment and this appendix is insufficient to impose an appropriate punishment, he may refer the case to an appropriate superior with a recommendation that the superior exercise his authority under Section 16, WVCMJ and this appendix. Also, if the authority of a commanding officer to exercise Section 16 nonjudicial punishment has been limited by this appendix thus precluding him from imposing any punishment or an appropriate punishment, the case may be referred to an appropriate superior. In transmitting a case for action by a superior, no recommendation as to the nature or extent of the punishment to be imposed will be made. Transmittal will be accomplished by written correspondence using Form AGO 2-6.

Section IV. Punishments.

7. Limitations on Authorized Punishments.

a. Upon an officer. Only those commanders authorized by regulation to convene a general or special court-martial shall have the authority to impose punishment provided for in Section 16 nonjudicial punishment [WV Code 15-1E-16]] upon an officer of his command.

b. Upon other military personnel of his command.

(1) Any person having the authority by regulation to convene general, special or summary court-martial, may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments:

- (i) Withholding of privileges for not more than two consecutive weeks;
- (ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;
- (iii) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included.

(iv) A fine of not more than fifty dollars.

(v) A reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command.

c. Pursuant to the authority of the Governor to place limitations on the kinds and amounts of punishments authorized under Section 16, WVC MJ, the following limitations are prescribed.

(1) No punishment imposed under Section 16, WVC MJ shall include confinement in jail.

(2) Punishment of fine of not more than fifty dollars or reduction in grade should generally not be imposed upon a first offender.

8. Rules relating to authorized punishments.

a. Restriction. The commanding officer who imposed the punishment, his successor in command, and superior authority may change the specified limits of restriction after imposition and before the term of restriction is completed, provided that the limits of restriction, as changed, are generally no more restrictive of movement than the limits imposed.

b. Extra duties. Extra duties shall be required to be performed during duty status, active state duty or annual training as applicable, and, within the duration of the punishment, for not more than two hours per day, holidays included. Extra duties may include the performance of fatigue duty or of any other military duty, such as practice march with full field equipment, but no duty may be imposed as extra duty which--

(1) Would constitute cruel or unusual punishment or a punishment not sanctioned by the customs of the service;

(2) Is a duty normally intended as an honor, such as assignment to a guard of honor;

(3) Is required to be performed in a ridiculous or unnecessarily degrading manner; for example, an order to clean a barracks floor with a toothbrush; or

(4) Is a punishment involving the use of the offender as a personal servant.

c. An enlisted person serving in the Army National Guard in the grade of E4 (SP4, CPL) or above; or an enlisted person serving in the Air National Guard in the grade of Sergeant (SGT), Senior Airman or above, may not be assigned extra duties as punishment under Section 16, WVC MJ, which would demean his position as a noncommissioned officer or specialist. The performance of extra duties involving labor or duties not customarily performed by personnel in these grades

as an example of extra duties of a demeaning nature. The supervision of details being accomplished after normal duty hours is an example of an extra duty which would not be demeaning.

9. Reserved.

10. Effective date and execution of punishments.

a. The date of imposition of nonjudicial punishment is the date Part I, AGO Form 2627, WVC MJ (Record of Proceedings Under Section 16), is signed by the officer who imposed the punishment. (See Figure 1.)

b. The punishments of reduction in grade, if unsuspended, take effect upon the issuance of the appropriate order by the State Adjutant General. A commander imposing Section 16 punishment of (1) reduction in grade shall, if unsuspended, promptly send to the State Adjutant General the completed copy of AGO Form 2627 with a Request for Reduction Order, AGO Form 600-200-2. This form must be completed by the commander imposing the punishment of reduction in grade, stating the reason for reduction to be, Section 16 nonjudicial punishment. If the reduction in grade is pending appeal, it should be noted on AGO Form 600-200-2.

If, upon the imposition of a fine, where no appeal is filed, the person upon whom the fine is imposed refuses to pay the fine, or when the person has not actually paid the fine within 5 days from the date of imposition, the commanding officer imposing punishment shall send a request to the State Adjutant General for a Detention of Offenders Pay and Allotments Order stating that detention of pay is requested for failure to pay fine imposed under Section 16 nonjudicial punishment. A copy of AGO Form 2627 shall accompany the detention of pay request.

The order detaining pay shall remain in effect until such time that the State Adjutant General receives the payment of the fine. (See paragraph 31.)

c. Other punishments, if unsuspended and if no appeal is filed, will take effect and be carried into execution on the date they are imposed unless otherwise prescribed by the officer imposing the punishment or by superior authority. If, at the time punishment is imposed, the recipient appeals by marking the appropriate box in Item 9, Part II, AGO Form 2627, WVC MJ, the execution of any punishment will be stayed pending completion of such appeal, unless the recipient requests otherwise. If the recipient indicates a desire to appeal and submit additional matters subsequently, completion of Item 9, Part II, AGO Form 2627, WVC MJ, will be delayed pending submission of such matters. Punishments involving restriction or performance of extra duties will be stayed for 3 consecutive days commencing the day after punishment was imposed to permit preparation and submission of additional matters for consideration on the appeal. If additional matters are submitted within that time, or the recipient decides to appeal without submitting additional matters, Item 7 will be completed and

the stay will remain in effect until the appeal has been acted upon. If Item 9 is not completed within the 3-day period, any punishment involving extra duties or restrictions will become effective and will not thereafter be stayed whether or not the appeal is completed within a reasonable time. Where, in the judgment of the commanding officer imposing punishment, the recipient is unable to complete the appeal within the 3-day period through no fault of his own and any additional matter he seeks to obtain during the extension will be indispensable to the appeal, the commanding officer may exercise discretion to extend the period during which punishment will be stayed. Extensions should be rare. If the recipient refuses to indicate his desires as to appeal at the time punishment is imposed, either verbally or by marking one of the boxes in Item 9, punishment will not be stayed.

d. If the member to be punished is already undergoing any of the punishments involving extra duties and the commanding officer wishes to impose an additional punishment of that kind, he may prescribe that the additional punishment will begin to run on a date on or after the termination of the first punishment.

e. The punishment of reduction to lower grade, unsuspended, becomes executed upon the issuance of the reduction order by the State Adjutant General. A reduction under Section 16, if suspended with the suspension later vacated, becomes executed and takes effect upon the issuance of the order by the State Adjutant General. (Note 11, Part III, AGO Form 2627, WVC MJ.)

f. When an unsuspended punishment of extra duties or restriction has been imposed under Section 16 by appropriate authority, any commanding officer of the person to be punished may order the punishment to be executed in such a manner and under such supervision as he may direct. The particular extra duties to be performed may be varied from time to time within the duration of the punishment.

Section V. Right to Demand Trial.

11. When Section 16 proceedings instituted. Section 16 proceedings may be instituted when a commander, having authority to impose Section 16 nonjudicial punishment, receives a report or learns of a violation of the WVC MJ by enlisted personnel of his command. The facts consisting of the violation are to be set forth in Part I - Initial Action, AGO Form 2627 by the commander having Section 16 powers.

12. Procedures.

a. The commander who intends to impose the punishment will notify the member concerned of that intent in writing in Part I, AGO Form 2627 and the right to demand trial by court-martial exists, and will inform him of this right.

If there is a change of commander subsequent to the member being notified by the commander of his intent to impose punishment, the successor in command must again advise the member of his rights as contained in this paragraph (para 12), and allow him to again avail himself of those rights prior to the successor in command imposing punishment. The AGO Form 2627, reflecting the previous commander's notifications and signature, may continue to be used; however, Part III, AGO Form 2627 should reflect that the successor in command gave the member the subsequent advice and opportunity to avail himself of the rights contained in this paragraph. The member concerned will also be informed of his right fully to present his case in the presence of the officer who intends to impose the punishment to include, but not limited to, the right to call witnesses, present evidence, and to be accompanied by a person to speak on his or her behalf. The member concerned will additionally be informed that the nonjudicial punishment proceedings will be opened to the public when requested by the member concerned, except where military exigencies or security interests preclude public disclosure.

b. The officer who intends to impose the punishment will afford the member a reasonable period of time in which to consult with a person to speak in his behalf and to decide whether or not he will demand trial. He will direct the member to state either that he does, or does not, demand trial within that period.

(1) This period should be established after due consideration of such factors as the gravity of the offense and the time involved in physically transmitting the communication.

(2) Under ordinary circumstances, 24 hours may be considered to be a reasonable time.

c. In deciding whether he wishes to elect trial by court-martial, the member is not entitled to be informed as to the type or amount of punishment he will be given if he does not demand trial. However, upon his request, he will be informed of the maximum punishment which may be imposed under Section 16 by the officer who is to impose the punishment and of the maximum punishment that can be adjudged by court-martial upon conviction of the offense or offenses involved.

d. If the member demands trial by court-martial as to any offense involved, further actions will not be taken to impose nonjudicial punishment as to that offense. Whether, in this event, charges will be preferred against the member with a view to trial by court-martial, and the type of court-martial to which the case will be referred or recommended for referral, are matters within the discretion of the appropriate commanding officer.

e. If a demand is not made prior to expiration of the specified interval, including any extension of time that may have been granted, the officer who is to impose punishment may proceed to do so. Punishment may also be imposed where the member refuses to complete and/or sign Item 2, Part I - Initial Action, AGO Form 2627, after having been afforded a reasonable time in which to make a decision. The member will be informed that punishment can be imposed where he fails to make a timely demand for trial or refuses to complete and/or sign Item

3, Part I - Initial Action, AGO Form 2627. If punishment is imposed under such circumstances, the following entry should be made in Item 7, AGO Form 2627, in addition to recording the punishment: "After having been fully advised of (his) (her) rights in accordance with paragraphs 12, 13 and 14, member (did not demand trial prior to expiration of the time specified for a decision) (refused to (complete) (sign) (complete and sign) Item (3), Part I of this form."

Section VI. Procedure: Records of Punishment

13. General.

a. The power to impose nonjudicial punishment charges a commanding officer, or an officer to whom that power has been delegated, with the grave responsibility of exercising his authority in a completely judicious manner. Authority under Section 16 must be administered with absolute fairness in a formal and dignified manner at every stage of the proceedings. The right and opportunity to present matters in defense, extenuation, or mitigation, and the right fully to present his case in the presence of the officer who intends to impose the punishment, will be afforded the member. The member will be afforded the right to be accompanied by a person to speak on his behalf and to call witnesses in defense, extenuation or mitigation. If the member so requests, the proceedings will be opened to the public, except where military exigencies or security interests preclude public disclosure. If the commanding officer decides to impose punishment, he will announce the punishment in the presence of the member except under rare circumstances when this is not feasible. The commander may then explain to the member such matters as what he considered in determining the punishment, and the appellate rights and procedures which are available to the member.

b. Display on unit bulletin boards of punishments under Section 16.

(1) In all cases involving nonjudicial punishment of personnel in the grade of E4 (SP4 or CPL) and below in the Army National Guard, or Sergeant or Senior Airman and below in the Air National Guard, including vacation of suspended punishment and other supplementary action, the commander will announce disposition of the case. An AGO Form 2627 will be used for this purpose. The AGO Form 2627 will be displayed conspicuously on unit bulletin boards, or other places where routine directed to members of a unit are posted, for a period of 7 days following imposition of the punishment or other action.

(2) In cases involving nonjudicial punishment of enlisted personnel in grades of E5 (SP5 or Sergeant) and above in the Army National Guard or Staff Sergeant (SSGT) in the Air National Guard and above, including vacation of suspended punishment and other supplementary action, the commander has discretion to announce disposition of the case, unless authority to announce such disposition is withheld by a higher commander. Announcement of disposition will be made as in (1) above. Before an announcement of disposition of cases of

members in the grade of E5, SP5, Sergeant in the Army National Guard or Staff Sergeant (SSGT) in the Air National Guard, due consideration should be given to the impact on unit morale and any impairment of the job and leadership effectiveness of the individual concerned.

c. Commander's guide for notification and imposition of nonjudicial punishment.

In all cases involving nonjudicial punishment, the commander should use Attachment A of this regulation as a guide in conducting the proceedings. Strict adherence to the letter of the suggested guide is not a procedural requirement for the imposition of nonjudicial punishment. The guide at Attachment A is intended to provide the commander with a recommended format. The guide contemplates a three-step process, conducted in the presence of the service member, consisting of (1) the notification session, (2) the hearing session (which may be omitted if the member admits fault), and (3) the findings and imposition of punishment (if the findings result in a determination of guilt) session. The guide is designed to ensure the commander's compliance with all the requirements of law and regulation when conducting Section 16 proceedings. Before beginning any Section 16 proceedings, the commander should have completed a preliminary inquiry and have concluded that nonjudicial punishment is appropriate for the offense and the offender. Prior to notifying the accused of the proposed imposition of punishment, Items 1 and 2, Part I, AGO Form 2627, should have been completed and signed by the commander.

d. Preliminary inquiry.

A commander exercising immediate jurisdiction under Section 16, WVC MJ will make or cause to be made a preliminary inquiry into the charges or the suspected offenses sufficient to enable him to make an intelligent disposition of them. This inquiry should usually be informal, consisting only of an examination of the charges and the summary of expected evidence which accompanies them. It is not the function of the person making the inquiry to prepare a case against the accused. He should collect and examine all evidence that is essential to a determination of the guilt or innocence of the accused as well as evidence in mitigation or extenuation. After the preliminary investigation he may decide to proceed with a Section 16 proceeding, or not to proceed because all or some of the charges do not warrant further action, because the charge or charges are trivial, do not state offenses, or are unsupported by available evidence. (See para 11.)

14. Procedural rules.

a. Notification.

Notification to the member is required and must be given by the officer who is to impose the punishment. The commanding officer, upon ascertaining to his satisfaction after any inquiry he considers necessary that an offense punishable under Section 16 has been committed by a member of his command, will, if he determines to exercise his Section 16 authority, so notify the member of the nature of the alleged misconduct unless trial by court-martial is demanded.

Also the commander may notify the member concerned of his intention to recommend to a superior commander that the member be punished under Section 16 for his alleged misconduct unless trial by court-martial is demanded. The notification will also inform the member that he may submit any matter desired in mitigation, extenuation, or defense. In every case, the member will be notified that he is not required to make any statement regarding the offense or offenses of which he is accused or suspected and that any statement made by him may be used against him in a trial by court-martial. An election to accept nonjudicial punishment constitutes a waiver of the right to demand trial. A demand for trial does not require that charges be preferred, transmitted or forwarded, but punishment may not be imposed under Section 16 while the demand is in effect.

The member will be given 24 hours to reply to the notification of intent to impose or recommend the imposition of Section 16 punishment, state whether he demands trial by court-martial, and submit any matter in extenuation, mitigation, or defense he desires to be considered. Punishment may be imposed only by the personal action of the commander. After the completion of Section 16 proceeding the member will be notified of the punishment imposed, informed of his right to appeal to the superior authority, and directed to acknowledge receipt of the notification of punishment and to state his election regarding an appeal.

The proceedings will be conducted in writing in all cases involving commissioned officers and warrant officers and in all cases in which the punishment includes reduction in grade, fine or forfeitures or detention of pay. In all other cases the proceedings may be in writing or may be conducted orally, following the same sequence. However, in any case the member may be permitted to appear in person before the officer authorized to impose the punishment, and that officer may personally interview witnesses. Any written statements or other documentary evidence pertaining to the case which have been considered by the officer authorized to impose the punishment shall be attached to the file. When oral proceedings are conducted, the commander will cause a summarized record to be made and filed. (See also para. 12.)

b. Action upon receipt of notification.

See paragraph (a) above, and paragraph 2, this regulation. The person who may accompany the member to the Section 16 proceedings and who speaks on his behalf need not be a lawyer. No travel fees, nor any other unusual costs, may be incurred at state expense for the presence of the spokesman. In addition, the spokesman's participation is to be completely voluntary. He may not be ordered to perform the duties of spokesman. Neither the member nor his spokesman may examine or cross-examine witnesses, unless the commander imposing the punishment so allows. Generally, the member or his spokesman (but not both) should be allowed to examine and cross-examine witnesses so long as the examination is not repetitious or irrelevant. The member or his spokesman is also authorized to indicate to the commander what the relevant areas or issues are in regard to which a witness is expected to testify. The commander will then pursue this line of questioning in his examination of the member's witnesses in addition to or in lieu of examination and cross-examination by the member or his spokesman.

A Section 16 proceedings before the commander is not an adversary proceeding. The member's request that the proceedings be open to the public shall ordinarily be granted, except where military exigencies or security interests preclude this procedure. It shall be within the discretion of the commander administering Section 16 proceedings to determine when such exigencies or security interests predominate over the member's request that the proceedings be open to the public. The member's request for witnesses in defense, extenuation, or mitigation shall be restricted to those witnesses who are reasonably available as determined within the discretion of the commander imposing Section 16 punishment. In determining whether a witness is reasonably available, the commander imposing Section 16 punishment shall take into consideration that no witness fees nor transportation fees will be paid. Reasonably available witnesses will ordinarily include those military personnel present for duty at the installation concerned, or those available without the expenditure of travel funds to obtain their presence, and whose attendance will not materially delay the disposition of the proceedings.

c. Action terminating proceedings.

If, after evaluation of all pertinent matters, the officer conducting the proceedings determines that nonjudicial punishment is not warranted, he should notify the member that he has terminated the proceedings.

15. Records of punishment.

a. In all Section 16 proceedings the record of punishment shall be AGO Form 2627. Upon the completion of the proceedings the original and all attachments (if any), unless appealed, shall be filed forthwith at the unit level in the member's 201 file (MPRJ). Filing of the record of punishment is the responsibility of the commander imposing nonjudicial punishment.

b. In all Section 16 proceedings in which the punishment imposed is reduction in grade, unsuspended and not appealed, the commander imposing the punishment shall, in addition to (a) above, forward a copy of the record of punishment and attachments (if any) to the State Adjutant General for filing in the member's 201 file (OMPRJ). Attached to the Record of Punishment shall be a Request for Reduction Orders completed by the commander imposing the reduction in grade. (See paragraph 10(b).)

c. Appeals: Records of punishment.

(1) Appeals of nonjudicial punishment.

If the member appeals from nonjudicial punishment the original record of punishment and all attachments (if any) shall be forwarded to the appropriate superior. (See 32.) After acting on the appeal the superior authority shall forthwith return the record of punishment and all attachments (if any) to the commander who imposed the punishment for filing in the member's 201 file (MPRJ).

(2) In all cases where a reduction in grade is appealed and the superior authority approves the reduction in grade the commander who imposed the punishment shall forward the record of punishment to the State Adjutant General as set forth in paragraph 15(b).

(3) Removal of record of punishment from member's 201 (MPRJ/OMPRJ) file.

(a) The record of punishment filed in the member's 201 (MPRJ/OMPRJ) file shall be removed as follows:

(1) One year has expired from the date of filing of the record of punishment in the member's 201 (MPRJ) file, where the punishment imposed is withholding of privileges, restriction, extra duties or imposition of fine.

(2) In all cases where the imposition of punishment is reduction in grade and The Adjutant General issues a reduction order, the record of punishment shall remain in the member's 201 (MPRJ/OMPRJ) for a period of two years from the date of filing, or until he is promoted back to the grade from which he was reduced, whichever is sooner.

(b) Exceptions. In all cases where a fine has been imposed upon a member, the record of punishment filed in the member's 201 (MPRJ) file shall not be removed from the file after one year, unless the fine has been paid by the member or set aside by a superior on appeal or otherwise.

(c) Reduction in grade; appeal. Whenever a reduction in grade is set aside by a superior on appeal or otherwise and a lesser punishment is imposed on the member, the record of punishment shall be filed in the member's 201 (MPRJ) file for a period of one year and upon the expiration thereof it shall be removed.

(d) Setting aside of punishment. In any case where the punishment imposed upon a member in a Section 16 proceeding is wholly set aside by a superior on appeal or otherwise and no punishment is imposed the record of punishment shall be removed.

Section VII. Suspension, Mitigation, Remission and Setting Aside.
16. Meaning of "successor in command"; recording of action.

a. A "successor in command" is the commanding officer who has succeeded to the command of the officer who imposed the punishment or under whose delegated power the punishment was imposed, if the person punished is still of the command. If the person punished ceases to be of that command, the "successor in command" is the present commanding officer of the offender who can impose the same kind and amount of punishment as that imposed in the case, or that resulted from any

modification by other competent authority. When there has been a succession in command with respect to the person punished, only the successor in command or an officer to whom the successor has delegated Section 16 powers, and the appropriate superior authority may take action with respect to suspension, mitigation, remission or setting aside.

b. Recording of action. Any action with respect to suspension, mitigation, remission or setting aside, taken by an authority other than an authority acting on appeal, will be recorded in accordance with Notes 10 and 11, Part III, AGO Form 2627.

17. Suspension.

Ordinarily, the purpose of suspending punishment will be to grant to a deserving member a probational period during which he may show that he is deserving of remission of the suspended portion of his nonjudicial punishment. If, because of further misconduct by the member within this period, it is determined that remission of the suspended punishment is not warranted, the suspension may be vacated and the suspended portion of the punishment executed. Action vacating a suspension will be recorded in accordance with notes 10 and 11, Part III, AGO Form 2627. Unless the suspension is vacated prior to the expiration of the stated period of suspension, the suspended punishment is automatically remitted without further action. In addition, the death of the individual punished or the expiration of his current enlistment or term of service prior to the expiration of the suspension will automatically effect remission of the suspended punishment.

18. Mitigation.

a. Definition. Mitigation means a reduction in either the quantity or quality of a punishment, its general nature remaining the same. For example, if a punishment of extra duties for 10 days is reduced to extra duty for 5 days, such action would constitute mitigation.

b. General. Mitigation is appropriate when it is determined that the offender has, by his subsequent good conduct, merited a reduction in the severity of his punishment, or when it is determined that the punishment imposed was disproportionate to the offense or the offender.

c. Limitation on mitigation. The power to mitigate exists only with respect to a punishment or portion thereof which is unexecuted. When mitigation a punishment to a lesser punishment of the same kind, the lesser punishment may not run for a period greater than the remainder of the period for which the punishment mitigated was imposed. Thus, if a person upon whom a punishment of 10 consecutive days of extra duties has been imposed has undergone 2 days of that punishment at the time it is decided to mitigate the extra duties to 5 days, the mitigated punishment may not run for a period in excess of 8 days. Thus, in the example above, the remaining 3 days of extra duties (2 hrs. per day) must be scheduled within the remaining 8 days of the original punishment period.

19. Remission.

This is an action whereby any portion of the unexecuted punishment is canceled by the officer imposing the punishment or his superior. Remission is appropriate under the same circumstances as mitigation. Discharge or other separation from the service remits any unexecuted punishment imposed under Section 16. In this regard, a person punished under Section 16 will not be held beyond his expiration of term or service to complete any unexecuted punishment imposed.

20. Setting aside and restoration.

This is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is set aside and any property, privileges, or rights affected by the portion of the punishment set aside are restored. The basis for this action is ordinarily a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. In those instances where administrative error results in incorrect entries on AGO Form 2627, the appropriate remedy generally is administrative correction of the form and not a setting aside of the punishment.

21. Limitations with respect to reduction in grade.

An unsuspended reduction to next inferior grade, imposed as nonjudicial punishment, becomes fully executed upon issuance of the reduction order by The Adjutant General. If the circumstances warrant, the reduction may be set aside in whole or in part, at any time prior to the issuance of the reduction order. The same rule applies to fines.

Section VIII. Appeals.

22. Who may act on appeal.

An appeal under Section 16 will be acted upon by the authority next superior to the commander who imposed the punishment if the person punished is still of the command of that officer at the time he appeals, but if the punishment has been imposed under a delegation of a superior's power to impose nonjudicial punishment, the appeal will be acted upon by the authority next superior to him. If, however, at the time he appeals from the punishment, the person punished is no longer of the command of the officer who imposed the punishment, the appeal shall be acted upon by the authority next superior to the present commanding officer (of the offender) who can impose the same kind and amount of punishment as that imposed in the case, or that resulted from any modification by other competent authority. The authority "next superior" to a particular commanding officer is the authority normally next superior in the chain of command, or such other authority as may be designated as being next superior for the purposes of Section 16 by higher authority. A superior authority who is a commanding officer exercising general court-martial jurisdiction, or is a general officer in command, may delegate those powers he has as superior authority under Section 16 to a commissioned officer of his command subject to the limitations in

paragraph 2(b). The State Adjutant General designates the State Judge Advocate the authority next superior for the purpose of acting on appeals from punishments imposed under Section 16 of the Code when there is no intermediate superior authority reasonably available to take this action. In such situations the appeal should be forwarded to State Judge Advocate, HQ, WV STARC, 1703 Coonskin Drive, Charleston, WV 25311-1085.

23. Procedure for submitting an appeal.

All appeals from nonjudicial punishment will be made on Part II, AGO Form 2627. If an appeal is made, this form will be forwarded through the officer who imposed the punishment to the superior authority who is to act on the appeal. Although a person punished is not required to state reasons for his appeal, he may do so if he desires. For example, he may state in his appeal that he regards the punishment imposed as excessive. He may also request that a certain kind of action be taken on the appeal; for example, that a reduction in grade mitigated on be suspended. The appellant may attach to the record of proceedings (AGO Form 2627) any documents he desires to be considered by the authority acting on the appeal.

24. Action by the officer who imposed the punishment or his successor in command.

The officer who imposed the punishment or his successor in command may take any action with respect to the punishment that the authority who may act on the appeal could take. If he suspends, mitigates, remits or sets aside any part of the punishment, he will record his action in accordance with notes 10 and 11, Part III, AGO Form 2627, advise the appellant thereof, and request him to state whether, in view of this action, the appellant wishes to withdraw his appeal. Unless the appeal is voluntarily withdrawn as a result of action taken by the officer who imposed the punishment or his successor in command, the appeal will be forwarded to the appropriate superior authority. The officer forwarding the appeal may attach thereto any matter in rebuttal of assertions made by the appellant. When the member desires to appeal, the officer who imposed the punishment or his successor in command will make available to the member any necessary assistance in preparing the appeal and will ensure that the appeal is promptly forwarded to the appropriate superior authority.

25. Action by superior authority.

Action by superior authority on appeals from nonjudicial punishment will be entered in Part II, AGO Form 2627. So that there will be minimum of delay in closing the case, the superior authority will act on the appeal with all possible dispatch. Although he need not conduct an independent inquiry into the case, he may do so if he deems that action desirable in the interest of justice. The superior authority must refer an appeal from certain punishments (appeals of officers; appeals from reduction in grade) to the State Judge Advocate for consideration and advice before taking action, and he may so refer an appeal in any case. In acting on an appeal, the superior authority may exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment or his successor in command.

26. Action by State Judge Advocate.

When an appeal is referred to the State Judge Advocate, he will consider the case and advise the authority who is to act on the appeal either orally or in writing. This advice will include the opinion of the Judge Advocate as to the appropriateness of the punishment, as well as his findings as to whether the proceedings were in accordance with law and regulations. The State Judge Advocate may submit any additional advice he deems appropriate.

27. Time within which an appeal may be made.

An appeal not made within a reasonable time may be rejected by the superior authority to whom it is made. Although no definite rules can be established as to what will constitute a reasonable time in every situation, an appeal (including documentary matters for consideration by the next superior authority) submitted more than 10 days after the punishment was imposed may, in the absence of extraordinary circumstances, be considered as not having been made within a reasonable time.

28. Action by superior authority regardless of appeal.

Any superior authority may exercise the same powers as may be exercised by the officer who imposes the punishment, or his successor in command, whether or not an appeal has been made from the punishment. The term, "any superior authority", has the same meaning as that given to the term, "next superior authority", in paragraph 22 except that it also includes any authority superior to that authority.

29. Appeal from suspended punishment.

Action will be taken on an appeal from suspended Section 16 punishment in the same manner and under the same conditions as an appeal from unsuspended punishment of the same kind and amount.

30. Statute of limitations.

Any person charged with an offense under Section 16, WVC MJ is not liable to be punished under Section 16, WVC MJ if the offense was committed more than two years before the imposition of punishment under Section 16, WVC MJ.

31. Disposition of fines.

All fines imposed under this chapter (Section 16 proceedings) shall be collected from the offender by the commander imposing punishment and forwarded to the State Adjutant General who shall deposit the same in the state military fund. Fines collected must be in the form of a cashier's check, certified check or money order payable to "The Adjutant General of West Virginia".

31 through 50. Reserved.

ATTACHMENT A
GUIDE FOR CONDUCT OF NONJUDICIAL
PUNISHMENT PROCEEDINGS

I. NOTIFICATION:

CO: I am _____, Commander of _____
(name of unit or organization). As a commander, I have disciplinary powers under Section 16 of the West Virginia Code of Military Justice. I have received a report that you violated the Code, and I am considering punishing you under Section 16. Punishment under Section 16 is called "Nonjudicial Punishment". It is called "nonjudicial" because these proceedings are not a formal judicial trial like a court-martial. As a record of these proceedings we use this AGO Form 2627. I now hand you this form. Please read items 1 and 2 in Part I. As you will see as you read the items, item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. You are specifically advised that, under the provisions of Section 34 of the West Virginia Code of Military Justice, you are not required to make any statement or provide any information concerning the alleged offense(s), but that, if you do, it may be used against you in these Section 16 proceedings or in a trial by court-martial.

1. Note for CO:

Wait for the accused to read items 1 and 2. Allow him to keep a copy of the AGO Form 2627 you have given him until the proceedings are finished and you have either imposed punishment or decided not to impose it.

CO: Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

D: (Yes) (No)

2. Note for CO:

If the serviceman does not understand the offense(s), explain the offense(s) to him. First, tell him what section(s) of the WVC MJ he is reported to have violated.

CO: Do you understand item 2? Do you have any questions about your rights in these proceedings?

D: (Yes) (No)

3. Note for CO:

If the serviceman does not understand his rights, explain them in greater detail. If the serviceman asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources:

- a. Section 16, WVCMJ;
- b. Appendix I of WVMR 27-10, 111-10.

If you cannot find the answer in one of these sources, you may contact the JAG office at HQ WV STARC, Charleston, WV.

CO: There are four decisions you have to make. You have to decide whether you want to demand court-martial. If you demand court-martial, these proceedings will stop. I then will have to decide whether to start court-martial proceedings against you. So you must first decide whether you want to present witnesses or submit other evidence in defense, extenuation, or mitigation. You also must decide if you desire to be accompanied by a person to speak on your behalf during the proceedings. If you decide to consent to these proceedings, I will not interpret your consent as an admission that you committed the offense(s); you can consent to the proceedings and still submit evidence in defense. Finally, you must decide whether you wish to request that the proceedings be open to the public. Evidence in defense would be fact showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you could still present evidence in extenuation or mitigation. Evidence in extenuation would be circumstances surrounding the offense, showing that the offense was not very serious. Evidence in mitigation would be facts about you, showing that you are a good soldier and that you deserve a light punishment. You can make a personal statement, or I will interview any available witnesses you would like me to talk to. I will also consider any writings or physical objects you think I should examine. Furthermore, I will allow your spokesman to assist you in accomplishing what I have just mentioned. Do you understand the decision you have to make?

D: (Yes) (No)

CO: I want to emphasize that if you consent to these proceedings and after you have presented your evidence and I am convinced that you are guilty, I could then punish you. The punishments I could impose on you in these proceedings would be _____.

4. Note to CO:

List the punishments you can impose under Section 16.

You should compare this punishment with the punishment you could receive in a court-martial. A court-martial could sentence you to _____ for this offense (these offenses).

5. Note to CO:

State punishments set forth in E19 WVC MJ. Even if the serviceman requests, you do not have to, and should not yet, inform him of the particular punishments you may be considering.

CO: As I have already pointed out, you may talk to your spokesman before you make your decisions. I cannot, however, order a member of the Guard to be your spokesman--it must be voluntary.

Would you like to talk to your spokesman before you make your decisions?

D: (Yes) (No)

6. Note to CO:

If the member does not have a spokesman and wants one, recess the proceedings for a short period to allow him to obtain a spokesman.

CO You now have 24 hours to think about what you should do in this case. You may advise me of your decision at any time within the 24-hour period.

7. Note to CO:

At this point, the proceedings should be recessed unless the service member affirmatively indicates that he or she has made a decision and does not want additional time. In the event the member does not make a decision within the specified time or refuses to complete or sign Part I of AGO Form 2627, see paragraph 12(e). When the member announces his or her decision to you, the proceedings may continue as follows:

CO: Do you want to demand court-martial?

D: (Yes) (No)

8. Note to CO:

If the answer is yes, continue as follows:

CO: Please sign and date blank below item 6.

9. Note to CO:

Wait until the serviceman signs and dates the form, then continue.

Since you have demanded court-martial, these proceedings will stop. I now must decide whether to start court-martial proceedings against you. I will notify you as soon as I have reached a decision. You are free to go now.

10. Note to CO:

If the answer is no, continue as follows:

CO: Now that you have told me what your first decision is, I would like to know what your other decisions are. Do you request that the proceedings in this case be made open to the public?

D: (Yes) (No)

CO: Please check item 6 on the original, indicating your decision. As the form provides, you may elect to have a spokesman accompany you throughout these proceedings and speak in your behalf. This individual is to assist you in pointing out to me those matters in your behalf which you think I should consider. Do you wish to be accompanied by a personal representative during the proceedings?

D: (Yes) (No)

CO: Please check item 4 on original indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or concerning the circumstances surrounding your case to explain why you committed the offense(s), or any other information concerning your background, including character witnesses, which you would like me to know?

D: (Yes) (No)

CO: Now check item 5 on original indicating your decision and sign and date the form in the space provided under that item.

11. Note to CO:

a. Wait until the serviceman checks the boxes and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.

b. If the answer regarding witnesses and evidence is yes and the serviceman is prepared to present his evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the serviceman, stop the proceedings. If you are still convinced that the serviceman is guilty and deserves to be punished, you may proceed to impose punishment.

c. If the serviceman needs additional time to gather his evidence, obtain a personal representative, or if public proceedings have been requested, proceed as follows: Give the serviceman a reasonable period of time to gather his evidence or to obtain a representative. Tell the serviceman when you intend to resume the proceedings. Then recess the proceedings. If public proceedings have been requested, take appropriate measures to ensure that this is accomplished. When you resume the proceedings, consider the serviceman's evidence. If the evidence persuades you that you should not punish the serviceman, stop the proceedings and inform the serviceman of your decision. If you are still convinced that the serviceman is guilty and deserves to be punished, you may proceed to impose punishment.

II. IMPOSITION OF PUNISHMENT

12. Note to CO:

As soon as you decide to impose punishment, complete item 7 and sign the blank below item 8. Then have the serviceman report to you and proceed as follows:

CO: (At our prior meeting) I told you that I was considering punishing you for the offense(s) of _____ unless you demanded court-martial. You decided to continue these Section 16 proceedings rather than demanding court-martial. Even though I told you that you could request that the proceedings in this case be open to the public, you decided not to make such a request. (At your request, the proceedings in this case were made open to the public.) You were informed that you could be accompanied to these proceedings by a person to speak on your behalf, but you decided to come by yourself. (You were accompanied to these proceedings by a person who was allowed to speak on your behalf.) You were also told that you could present evidence or witnesses in defense, extenuation, or mitigation, but you decided not to present any. You submitted evidence and/or witnesses in (defense) (and) (extenuation) (and) (mitigation). I have fully considered your evidence. Is there anything else you would like to say before I tell you my decision?

D: (Yes) (No)

CO: (Even after considering your evidence) I am (still) convinced that you committed the offense(s) state in item 1. For that reason, I hereby impose the following punishment upon you: _____

III. APPELLATE ADVICE

13. Note to CO:

Hand the AGO Form 2627 to the serviceman.

CO: Please read item 7 of the form. As you can see, item 7 lists the punishments I just mentioned to you. After you read item 7, please read item 8. As item 8 points out, you have a right to appeal these punishments to (title and organization of next superior authority), my immediate superior. You can appeal because you contend that you are not guilty of the offense(s) for which I punished you, or that the punishments I have imposed in these proceedings are too severe.

If you want to appeal, you should submit your appeal within 10 days from today because, absent unusual circumstances, an appeal submitted after that time may be automatically rejected. If you appeal, the punishment(s) of (name any of the following unsuspended punishments that you imposed are delayed pending appeal). If you need more time to prepare and submit additional matters, or to consult with your spokesman, I will give you 3 consecutive days after today namely, to next (day and date) to submit additional matters. During this period the punishment(s) imposed will not be carried out. If additional matters are submitted to me within the 3 days, the punishment(s) I just referred to will not be carried out until action has been taken on your appeal. If you do not submit additional matters to me within the 3-day period, these punishment(s) will become effective and will remain in effect even though you submit your appeal at a later time. The punishment(s) I have imposed will also be delayed if you decide not to submit additional matters and, within the 3-day period, appeal without submitting such matters. In the event you are unable to complete your appeal within the specified period, you may request that I extend the 3-day period. Whether to do so or not is completely within my discretion. If you make such a request, it should be made before expiration of the 3-day period. Otherwise, the punishment(s) I have imposed will become effective. If you appeal, (title and organization of next superior authority) can take several types of action on your appeal: He can simply deny your appeal and approve the punishment(s); he can suspend the punishment(s) I have imposed; he can reduce the quality of the punishment(s); or he can completely cancel the punishment(s). Your spokesman (if he has one) may assist you with your appeal.

Do you have any questions about your right to appeal?

D: (Yes) (No)

CO: Do you desire to appeal?

D: (Yes) (No)

14. Note to CO:

If the answer is yes, go to note 16.

If the answer is no, continue as follows:

CO: If you do not want to appeal, please check the first box in item 9 and sign the blank below item 9.

15. Note to CO:

Now give the service member detailed orders as to how you want him or her to carry out the punishments.

CO: You are free to go now.

16. Note to CO:

If the answer is yes, continue as follows:

CO: Do you want to submit any additional matters for (title and organization of next superior authority) to consider in deciding your appeal?

D: (Yes) (No)

17. Note to CO:

If the answer is yes, go to note 18.

If the answer is no, continue as follows:

CO: Please check the second box in item 9 and sign the blank below item 9. I will send the AGO Form 2627 to (title and organization of next superior authority) today. I will notify you as soon as I learn what action (title and organization of next superior authority) has taken on your appeal. You are free to go now.

18. Note to CO:

If the answer is yes, continue as follows:

CO: Item 9 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it and complete item 9 by checking the third box and signing the blank below. After you complete item 9, I will send the AGO Form 2627 and the additional matter you submit to (title and organization of next superior authority). Remember that the punishment(s) I imposed will not be delayed for more than 3 days unless the additional documentation is submitted and item 7 is completed within that time. You are free to go.

CHARGE SHEET			
PLACE		DATE	
ACCUSED (Last name, First name, Middle Initial) (List aliases when material)		SOCIAL SECURITY ACCOUNT NUMBER	GRADE OR RANK AND PAY GRADE
ORGANIZATION AND ARMED FORCE (If the accused is not a member of any armed force, state other appropriate description showing that he is subject to military law)		DATE OF BIRTH	PAY PER MONTH
		CONTRIBUTION TO FAMILY OR QUARTERS ALLOWANCE (MCM, 126N2) (If none, so state)	BASIC \$
			SEA OR FOREIGN DUTY \$
		TOTAL \$	
RECORD OF SERVICE			
INITIAL DATE OF CURRENT SERVICE		TERM OF CURRENT SERVICE	
PRIOR SERVICE: <u> </u> YEARS <u> </u> MONTHS <u> </u> DAYS (As to each prior period of service, give inclusive dates of service and Armed Force, if available.)			
DATA AS TO WITNESSES			
(Summary Court Officer will line out and insert names as applicable (MCM, 79) and initial changes)			
NAME OF WITNESS	ADDRESS (Include ZIP Code)	WITNESSES FOR	
		PROSECUTION	ACCUSED
DOCUMENTS AND OBJECTS			
LIST AND DESCRIBE (If not attached to charges, note where it may be found)			
DATA AS TO RESTRAINT			
NATURE OF ANY RESTRAINT OF ACCUSED	DATE	LOCATION	

Charge : Violation of the West Virginia Code of Military Justice, Section

Specification

If this space is insufficient for all charges and specifications, they will be set forth separately, front to back, on separate sheets attached to this page.

NAME, GRADE, AND ORGANIZATION OF ACCUSER	SIGNATURE
AFFIDAVIT	
Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this _____ day of _____, 19____, and signed the foregoing charges and specifications under oath that he is a person subject to the <u> 17 </u> Code of Military Justice, and that he either has personal knowledge of or has investigated the matters set forth therein, and that the same are true in fact, to the best of his knowledge and belief.	
GRADE AND ORGANIZATION OF OFFICER	SIGNATURE
OFFICIAL CHARACTER, AS ADJUTANT, SUMMARY COURT, ETC. (MCM, 19g, and Article 30g and 136)	TYPED NAME
Officer administering oath must be a commissioned officer.	
DATE _____ I have this date informed the accused of the charges against him (MCM, 32f(1)).	
NAME, GRADE, AND ORGANIZATION OF IMMEDIATE COMMANDER	SIGNATURE
DATE _____ PLACE _____ DESIGNATION OF COMMAND OF OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION _____ The sworn charges above were received at _____ hours, this date (MCM, 33b). FOR THE ' _____	
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING	SIGNATURE
1ST INDORSEMENT	
DATE _____ PLACE _____ DESIGNATION OF COMMAND OF CONVENING AUTHORITY _____ Referred for trial to the _____ court-martial appointed by _____ _____, _____, 19____, subject to the following instructions: ² _____ _____ BY ' _____ of _____ COMMAND OR ORDER	
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING	SIGNATURE
I have served a copy hereof on each of the above-named accused, this _____ day of _____, 19____.	
NAME, GRADE, AND ORGANIZATION OF TRIAL COUNSEL	SIGNATURE
¹ If an appropriate commander signs personally, applicable words are stricken out. ² Relative to proper instructions which may be included in the indorsement of reference for trial, see MCM, 13f(1). If none, so state.	

Fill in blank numbers of pertinent charges and specifications or "all specifications and charges," as may be appropriate for use unless departmental regulations prevent such election (MCM, 32(2)).			
☐ THE ACCUSED HAS BEEN PERMITTED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER SECTION 16, MCM			
☐ THE ACCUSED HAS NOT BEEN OFFERED punishment under Section 16 MCM			
NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING ARTICLE 15 JURISDICTION		SIGNATURE	
RECORD OF TRIAL BY SUMMARY COURT-MARTIAL		CASE NUMBER (inserted by convening authority)	
WAS THE ACCUSED ADVISED IN ACCORDANCE WITH PARAGRAPH 79d, MCM, 1969 (Rev.)? ☐ YES			
(To be filled in by summary court)		SIGNATURE OF ACCUSED	
☐ CONSENT ☐ OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL		(To be filled in by the accused)	
TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE			
THE ACCUSED, HAVING REFUSED TO CONSENT IN WRITING TO TRIAL BY SUMMARY COURT-MARTIAL, THE CHARGES ARE HEREWIT RETURNED TO THE CONVENING AUTHORITY.			
☐ CHECK, IF APPLICABLE			
NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER		SIGNATURE	
SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR REMARKS
			NUMBER OF PREVIOUS CONVICTIONS CONSIDERED (MCM, 73b(2))
PLACE AND DATE OF TRIAL			DATE SENTENCE ADJUDGED
NAME, GRADE, ORGANIZATION, AND ARMED FORCE OF SUMMARY COURT OFFICER (MCM, 4g)		SIGNATURE	
Enter after signature, "Only officer present with command", if such is the case.			
TO BE FILLED IN BY CONVENING AUTHORITY (MCM, 59, and app. 1-4e)			
ORGANIZATION	PLACE	DATE	
ACTION OF CONVENING AUTHORITY			
NAME, GRADE, AND ORGANIZATION OF CONVENING AUTHORITY		SIGNATURE	
ENTERED ON APPROPRIATE PERSONNEL RECORDS IN CASE OF CONVICTION. (MCM, 91c)			
A COPY OF THE RECORD OF TRIAL AND ACTION OF THE CONVENING AUTHORITY HAS BEEN FURNISHED TO THE ACCUSED.			
NAME, GRADE, AND DESIGNATION OF OFFICER RESPONSIBLE FOR ACCUSED'S RECORDS		SIGNATURE	
NOTE: Summary of evidence, if required by the convening or higher authority, will be attached on separate pages.			

SEE NOTES ON REVERSE BEFORE
COMPLETING FORM

RECORD OF PROCEEDINGS UNDER SECTION 16, NVCMD
For use of this form, see NVMR 27-10, 111-10

Name and grade	SEN	UNIT	Pay (Basic & Sea Foreign)
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Sect. 16, NVCMD for the following misconduct: 2/

2. You have several rights under this Sect. 16 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Sect. 16 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Sect. 16 you have the right to demand trial by court-martial instead. 2

You now have _____ hours to decide what you want to do. 4/

Date and time	Name, grade and organization of commander	Signature
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3. Trial by court-martial ☐ is ☐ is not demanded. 1/ 4. A spokesman ☐ will ☐ will not accompany me. 1/
5. Matters in defense and/or extenuation: ☐ are not presented ☐ are attached hereto ☐ will be presented in person. 1/
6. An open hearing ☐ is ☐ is not requested. 1/

Date	Name and grade of service member	Signature
------	----------------------------------	-----------

7. I have considered all matters presented in defense and/or extenuation and mitigation. 1/ The following punishment(s) (s) are imposed: 2/

8. You are advised of your right to appeal this punishment within _____ days to the next superior authority.

Date	Name, grade and organization of commander	Signature
------	---	-----------

PART II - APPELLATE ACTION

9. ☐ I do not appeal. ☐ I appeal and do not submit matters for consideration by the next superior authority. 1/
☐ I appeal and submit the matter attached hereto for consideration by the next superior authority. 1/

Date	Name and grade of service member	Signature
------	----------------------------------	-----------

10. I have considered the appeal and it is my opinion that: 2/

Date	Name and grade of judge advocate	Signature of judge advocate
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11. After consideration of all matters presented in appeal, the appeal is ☐ Denied ☐ Granted ☐ Granted in part as follows: 1/

Date	Name, grade and position	Signature
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12. I have seen the action taken on my appeal.

Date	Name and grade of service member	Signature
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PART III - ATTACHMENTS AND/OR COMMENTS 10/ 11/

NOTES

1. See Appendix I, WPM(AFM) 27-10, WPM(AIR) 111-10, for further guidance.
2. Insert a concise statement of each offense in terms stating a specific violation of the WPM. If additional space is needed, use Part III and/or continuation sheets as described in Note 10 below.
3. If the individual is attached to or embarked in a vessel, he is not permitted to refuse Section 16 punishment. In such cases, all reference to a demand for it will be lined out and an appropriate remark will be made in Part III indicating the official name of the vessel and that the individual was attached to or embarked in the vessel at the time punishment was imposed.
4. Give the individual an information copy of this form. Keep all other copies together until Item 10 is completed. Twenty-four hours is a reasonable time in which to require the individual to make a decision.
5. Check appropriate box.
6. If, after presentation of matters in defense and in extenuation and mitigation, the commander decides not to impose Section 16 punishment, the individual should be so notified and all copies of this record destroyed.
7. Strike out inapplicable word(s). The amount of any forfeitures or detention of pay should be expressed in whole dollar amounts.
8. If the individual appeals, this form and attached sheets should be transmitted immediately to the next superior authority. All witness statements, official records, and other documentary evidence considered by the commander in imposing punishment also should be transmitted.
9. When the punishment, whether or not suspended, is the following, the appeal must be referred to a Judge Advocate for advice prior to taking action on the appeal. Appeals of officers and appeals of reduction in grade.
10. In this space, provide a brief list of attachments. Such attachments should include all witness statements, all documentary and other evidence, all statements presented by the accused, any evidence or statements presented on appeal and copies of any supplementary actions on the punishment that are taken. The list of supplementary actions should indicate the date of the action and provide a brief description of its nature. Supplementary actions include each action suspension, mitigation, remission, or setting aside of punishment, or vacation suspension. Attachments of such supplementary actions must include the date of the action and the name, grade, and position of the officer taking it. The officer taking each action, or his authorized representative, will sign below description of the action. When a representative signs such a supplementary action, he will state his own name, grade, and position, in addition to those of the commander. Distribution of supplementary actions should be made as in the original action. If additional space is needed for completion of any item(s), continuation should be accomplished on plain bond paper and listed herein as "Continuation Sheet 1," "Continuation Sheet 2," etc.
11. Applicable portions of the following suggested formats may be used to accomplish supplementary actions:

- a. Suspension, Mitigation, Remission, or Setting Aside Other than by Superior Acting on Appeal

DATE:

On (Date) _____, the punishment(s) of _____
(was)(were) (suspended until _____) (mitigated to) (set aside, and all rights, privileges, and property affected restored) (by my order) (by order of) (the officer who imposed the punishment) (as superior authority).

(typed name, grade and branch) (s) _____

- b. Vacation of Suspension

DATE:

The suspension of the punishment(s) of _____
imposed against (Name of offender) (Unit) (is) (are) hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed.

(typed name, grade and branch) (s) _____

REQUEST FOR REDUCTION ORDERS

FOR TAG-WV USE:

Records Checked (WVADP) _____

Eligibility Check _____

FORMAT 306: Order# _____ dtd _____

FOLLOWING TO BE COMPLETED BY UNIT:

Date Prepared _____

(NAME: Last, First, MI)

(SSN)

(GRADE)

UNIT: _____

(CITY)

(STATE)

(ZIP CODE)

Reduced from: _____ to: _____

*PMOS Awarded: _____ *SMOS Awarded: _____

*PMOS Withdrawn: _____ *SMOS Withdrawn: _____

Reason for Reduction: _____

Effective Date: _____

Authority: Sec. 16, WVCMJ

Date of Rank: _____

MTOE Assignment

*FROM: Para _____ Line No _____

TO: Para _____ Line No _____

(Signature of Unit Commander)

FOR CLASSIFICATION AUTHORITY USE ONLY:

The above request for personnel action is approved.

(Classification Authority)

*Complete only if MOS or assignment changes as a result of reduction.