

UNITED STATES MARINE CORPS
Schools Company, Schools Battalion
Marine Corps Base
Camp Pendleton, California 92055

5812
21 July 20cy

From: Private John Q. Adams 456 64 5080/0311 USMC
To: Commanding Officer, Schools Battalion, Marine Corps Base, Camp Pendleton, CA
92055
Via: Commanding Officer, Schools Company, Schools Battalion, Marine Corps Base, Camp
Pendleton, CA 92055

Subj: APPEAL OF NONJUDICIAL PUNISHMENT

Ref: (a) MCM (2002 ed.)

1. In accordance with reference (a), I am appealing the punishment awarded me at company office hours on 18 July 20cy.
2. Because this was my first offense, I feel that the punishment handed down to me at office hours was too hard and disproportionate to the offense that I committed. Additionally, I feel that my commanding officer did not consider my state of mind at the time I went UA.

/s/ John Q. Adams
JOHN Q. ADAMS

(3) Vacation of a suspension is not punishment for the misconduct that triggers the vacation. Accordingly, misconduct may be punished and also serve as the reason for vacating a previously suspended punishment imposed at mast. Vacation proceedings are often handled at NJP. First, the suspended punishment is vacated; then the commanding officer can impose NJP for the new offense, but not for a violation of a condition of suspension unless it is itself a violation of the UCMJ. If NJP is imposed for the new offense, the accused must be afforded all of his hearing rights, etc.

(4) The order vacating a suspension must be issued within ten working days of the commencement of the vacation proceedings and the decision to vacate the suspended punishment is not appealable as an NJP appeal. JAGMAN, § 0118d.

e. The probationary period cannot exceed six months from the date of suspension and terminates automatically upon expiration of current enlistment. Part V, para. 6a(2), MCM (2002 ed.). The running of the period of suspension will be interrupted, however, by the unauthorized absence of the accused or the commencement of any proceeding to vacate the suspended punishment. The running of the period of probation resumes again when the unauthorized absence ends or when the suspension proceedings are terminated without vacation of the suspended punishment. JAGMAN, § 0118c; MJM 1.E.4.

0406 APPEAL FROM NONJUDICIAL PUNISHMENT

A. *Procedure.* If punishment is imposed at NJP, the commanding officer is required to ensure that the accused is advised of his right to appeal. Part V, para. 4c(4)(B)(iii), MCM (2002 ed.); JAGMAN, § 0110e and app. A-1-f. A person punished under article 15 may appeal the imposition of such punishment through proper channels to the appropriate appeal authority. Art. 15e, UCMJ; JAGMAN, § 0117; MJM 1.F. and enclosure (4). If, however, the offender is transferred to a new command prior to filing his appeal, the immediate commanding officer of the offender at the time the appeal is filed should forward the appeal directly to the officer who imposed punishment. JAGMAN, §§ 0116 and 0117.

1. When the officer who imposed the punishment is in the Navy chain of command, the appeal will normally be forwarded to the area coordinator authorized to convene general courts-martial. JAGMAN, § 0117a.

a. A GCM authority superior to the officer imposing punishment may, however, set up an alternative route for appeals.

b. When the area coordinator is not superior in rank or command to the officer imposing punishment, or when the area coordinator is the officer imposing punishment, the appeal will be forwarded to the GCM authority next superior in the chain of command to the officer who imposed the punishment.

c. An immediate or delegated area coordinator who has authority to convene GCM's may take action in lieu of an area coordinator if he is superior in rank or command to the officer who imposed the punishment.

d. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the unit at the time of forwarding the appeal.

2. When the officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps, the appeal will be made to the officer next superior in the operational chain of command to the officer who imposed the punishment (e.g., an appeal from company office hours should be submitted to the battalion commander). When such review is impractical due to operational commitments, as determined by the officer who imposed the punishment, appeal from NJP shall be made to the Marine officer authorized to convene general courts-martial geographically nearest and senior to the officer who imposed the punishment. JAGMAN, § 0117b.

3. When the officer who imposed the punishment has been designated a commanding officer for naval personnel of a multi-service command pursuant to JAGMAN, § 0106d, the appeal will be made in accordance with JAGMAN, § 0117c.

4. A flag or general officer in command may, with the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, delegate authority to act on appeals to a principal assistant. JAGMAN, § 0117d.

5. An officer who has delegated his NJP power to a principal assistant under JAGMAN, § 0106c, may not act on an appeal from punishment imposed by that assistant.

6. In the Coast Guard, appeals are submitted via the chain of command of the officer who imposed the punishment to the next superior commissioned officer in the commanding officer's chain of command who has a military lawyer regularly assigned. MJM 1.F.2.

B. Time. Appeals must be submitted in writing within five working days of the imposition of NJP, or the right to appeal shall be waived in the absence of good cause shown. Part V, para. 7d, MCM (2002 ed.). The appeal period begins to run from the date of the imposition of NJP, even though all or any part of the punishment imposed is suspended. In computing the 5-day period, allowance must be made for the time required to transmit the notice of imposition of NJP and the appeal itself through the mails. In the case of an appeal submitted more than five days after the imposition of NJP (less any mailing delays), the officer acting on the appeal shall determine whether "good cause" was shown for the delay in the appeal. JAGMAN, § 0116a(1). MJM 1.F.1.

1. **Extension of time.** If it appears to the accused that good cause may exist which would make it impracticable or extremely difficult to prepare and submit the appeal within the 5 working day period, the accused should immediately advise the officer who imposed the punishment of the perceived problems and request an appropriate extension of time. The officer

imposing NJP shall determine whether good cause was shown and shall advise the accused whether an extension of time will be permitted. JAGMAN, § 0116a(2).

2. *Request for stay of restraint punishments or extra duties.* A servicemember who has appealed may be required to undergo any restraint punishment or extra duties imposed while the appeal is pending, except that, if action is not taken on the appeal by the appeal authority within five days after the written appeal has been submitted, and if the accused has so requested, any unexecuted punishment involving restraint or extra duties shall be stayed until action on the appeal is taken. Part V, para. 7d, MCM (2002 ed.). It is helpful if the accused includes in his written appeal any request for stay of restraint punishment or extra duties; however, a written request for a stay is not specifically required, nor is it required to be submitted with the original appeal request.

C. *Contents of appeal package.* Sample NJP appeal packages are included as appendices at the end of this chapter. One is a suggested format for Marine Corps use and the other is for use in Navy cases. See appendices 4-1 and 4-2.

1. *Appellant's letter (grounds for appeal).* The letter of appeal from the accused should be addressed to the appropriate appeal authority via the commander who imposed the punishment and other appropriate commanding officers in the chain of command. The letter should set forth the salient features of the NJP (date, offense, who imposed it, and punishment imposed) and detail the specific grounds for relief. There are only two grounds for appeal: the punishment was unjust or the punishment was disproportionate to the offense committed. Unjust punishment exists when the evidence is insufficient to prove the accused committed the offense; when the statute of limitations (Art. 43(b)(2), UCMJ) prohibits lawful punishment; or when any other fact, including a denial of substantial rights, calls into question the validity of the punishment. Punishment is disproportionate if it is, in the judgment of the reviewer, too severe for the offense committed. An offender who believes his punishment is too severe thus appeals on the ground of disproportionate punishment, whether or not his letter artfully states the ground in precise terminology. Note, however, that a punishment may be legal but excessive or unfair considering circumstances such as: the nature of the offense; the absence of aggravating circumstances; the prior record of the offender; and any other circumstances in extenuation and mitigation. The grounds for appeal need not be stated artfully in the accused's appeal letter, and the reviewer may have to deduce the appropriate ground implied in the letter. Inartful draftsmanship or improper addressees or other administrative irregularities are not grounds for refusing to forward the appeal to the reviewing authority. If any commander in the chain of addressees notes administrative mistakes, they should be corrected, if material, in that commander's endorsement which forwards the appeal. Thus, if an accused does not address his letter to all appropriate commanders in the chain of command, the commander who notes the mistake should merely readdress and forward the appeal. He should not send the appeal back to the accused for redrafting since the appeal should be forwarded promptly to the reviewing authority. The appellant's letter begins the review process and is a quasi-legal document. It should be temperate and state the facts and opinions the accused believes entitles him to relief. The offender should avoid unfounded allegations concerning the character or personality of the officer imposing punishment. See Article 1108, *U.S. Navy Regulations, 1990*. The accused, however, should state the reasons for his appeal as clearly as

possible. Supporting documentation in the form of statements of other persons, personnel records, etc., may be submitted if the accused desires. **In no case is the failure to do these things lawful reason for refusing to process the appeal.** Finally, should the accused desire that his restraint punishments or extra duties be stayed pending the appeal, he may specifically request this in the letter.

2. *Contents of the forwarding endorsement.* All via addressees should use a simple forwarding endorsement normally and should not comment on the validity of the appeal. The exception to this rule is the endorsement of the officer who imposed the punishment. Section 0116c of the *JAG Manual* requires that his endorsement should normally include the following information. (Marine Corps units should also refer to LEGADMINMAN, chapter 2 and Coast Guard units to MJM 1.F., for more specific information.):

a. Comment on any assertions of fact contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous;

b. recitation of any facts concerning the offenses which are not otherwise included in the appeal papers (If such factual information was brought out at the mast or office hours hearing of the case, the endorsement should so state and include any comment in regard thereto made by the appellant at the mast or office hours. Any other adverse factual information set forth in the endorsement, unless it recites matters already set forth in official service record entries, should be referred to appellant for comment, if practicable, and he should be given an opportunity to submit a statement in regard thereto or state that he does not wish to make any statement.);

c. as an enclosure, a copy of the completed mast report form (NAVPERS 1626/7 or CG-4910) or office hours report form (NAVMC 10132);

d. as enclosures, copies of all documents and signed statements which were considered as evidence at the mast or office hours hearing or, if the NJP was imposed on the basis of the record of a court of inquiry or other fact-finding body, a copy of that record, including the findings of fact, opinions, and recommendations, together with copies of any endorsements thereon; and

e. as enclosures, copies of the appellant's record of performance as set forth on service record page 9 (Navy) or page Record of Service and NAVM C 118(3) (Marine Corps).

The officer who imposed the punishment should not, by endorsement, seek to "defend" against the allegations of the appeal but should, where appropriate, explain the rationalization of the evidence. For example, the officer may have chosen to believe one witness' account of the facts while disbelieving another witness' recollection of the same facts and this should be included in the endorsement. This officer may properly include any facts relevant to the case as an aid to the reviewing authority, but should avoid irrelevant character assassination of the accused. Finally, any errors made in the decision to impose NJP or in the amount of punishment imposed should