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OREGON ARMY NATIONAL GUARD
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REPLY TO
ATTENTION OF

NGJA-OR-TDS

14 MAY 2011

MEMORANDUM FOR Soldiers Regarding Article 15 Disposition

SUBJECT: ARTICLE 15 FACT SHEET (Title 10 and Title 32 – Oregon National Guard)

1. References.

- a. Uniform Code of Military Justice.
- b. Oregon Code of Military Justice (ORARNGR 27-5 2010).
- c. Oregon Rules for Courts-Martial (1989)¹.
- d. AR 27-10, Military Justice.

2. Memorandum Background and Initial Warnings. If you have been informed that your commander has started non-judicial punishment (“Article 15”) procedures against you, or believe that may happen, then this sheet is designed to help you understand the Article 15 process, the DA Form 2627 (the “Article 15” form) and to prepare you for the presentation or reading of the Article 15 by the command. In Active Duty (AD) posts the Trial Defense Service (TDS) usually has a briefing at their office to go over rights and options. For USAR and ARNG, generally you will have to rely on written guidance such as this memorandum and a consultation with a TDS JAG. If after reading this paper and hearing the briefing, you have any questions whatsoever, please ensure that you ask one of the trial defense attorneys at your local TDS office. The Oregon point of contact is referenced at the bottom of this memorandum.

a. **YOU HAVE THE RIGHT TO REMAIN SILENT.** If a Government representative reasonably believes that you have committed an offense then they are supposed to read you your Miranda rights, particularly as described under Article 31 of the UCMJ. If you are talking to anyone other than a TDS attorney or TDS 27D, or a legal assistance attorney, or chaplain, remember that nothing you say is privileged and you quite possibly have the right to remain silent under Article 31 and ‘Miranda’. Anything you say can be used against you, and so be very careful of what you say and who you say it to. Be very wary of trying to explain yourself, only to have to back track to re-explain what you said, which may very well then sound like you were not telling the truth the first time. Talking to a friend, or acquaintance who will be required by law to report, or to tell the Government exactly what you said is generally NOT a good idea. Your voluntary, non-elicited statements can be used against you. It is much better to say nothing before you have consulted with a JAG Trial Defense Counsel (TDC). Tell your consulting TDC what you’ve said and who you’ve said it to, and especially any written statements

¹ The Oregon Rules for Courts-Martial continue to be as prescribed under the 1989 ORMCM (Oregon Manual for Courts-Martial), and so the 1989 ORMCM continues except as amended in ORARNGR 27-5, which replaced the statutory provisions earlier prescribed for offenses and Article 15.

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you've made. Aside from that a TDC will often take the tactic to analyze the Government evidence, any statements you've made, witnesses that you are aware of and what they might know, and NOT specifically want to know anything from you other than what evidence the Government might have, in order to analyze the strength of the Government case against you. Beware of 'bunkhouse' lawyers, and internet fairy tales on the law, lab results and other technical legal matters pertaining to YOUR future. A JAG TDC is a legally trained and licensed specialist in military law, dedicated to your defense.

3. Sources of Authority. There are Article 15 processes under Federal Title 10, specifically arising under the Uniform Code of Military Justice (UCMJ) and AR 27-10, and State or Territorial National Guard Article 15's arising under the State or Territorial Code of Military Justice (SCMJ), and any regulations the state or territory ('state') have promulgated usually incorporating provisions of AR 27-10. This memorandum addresses generally the Federal Article 15 and specifically the Oregon National Guard modifications of that process. If you are in a state other than Oregon, you need to contact the state Trial Defense Service (TDS) to get specifics on your state code. The procedures and possible sanctions are different from Federal Status to State status (Title 32) from state to state.

4. Purpose of this Memorandum. This fact sheet contains detailed answers to common questions concerning Article 15s, sometimes called non-judicial punishment (NJP). This fact sheet is not intended as a substitute for speaking with a defense attorney. Any soldier who is read a company or field grade Article 15 has an absolute right to consult with a defense attorney before deciding whether to accept the Article 15. For active duty (AD) Soldiers contact your post TDS office as soon as possible. For USAR contact your USAR TDS, and for National Guard, contact your state TDS. If you are National Guard in the Western Region (Guam, Hawaii, California, Arizona, Nevada, Utah, Oregon, Idaho, Montana, Washington and Alaska), a request for counsel submitted to our website – email address will be forwarded to the appropriate designated Senior Defense Counsel or Trial Defense Counsel. Air National Guard Airmen should contact their Wing Judge Advocate to request defense counsel. At times the Army TDS will provide services but usually only after there are no ANG JAGs available for defense services and a request by the ANG JAG for assistance is made to the Army TDS. There are limitations also to Army legal services to ANG under Air Force AFI's.

5. Purpose of the Article 15. The authority for commanders to give an Article 15 is found in what is called Article 15 of the Uniform Code of Military Justice, or a corresponding statute, or regulation(s) under a SCMJ. An Article 15 is considered non-judicial punishment, meaning that it is not considered a judicial proceeding. Non-judicial punishment is a military justice option available to commanders. It permits commanders to resolve allegations of minor misconduct against a soldier without resorting to higher forms of discipline, such as a court-martial. The decision to impose an Article 15 is completely the commander's. A soldier may, however, refuse to accept the Article 15 and instead demand trial by court-martial. *In Oregon, the OCMJ provides for no right of turn down to request Courts-Martial at Company Grade but instead a right of new hearing ('de novo') with the appellate commander, and then appeal would be to the next level commander².*

² "A person punished under this article by a commanding officer of the grade of captain or below who considers the findings unsupported by the evidence or the punishment unjust or disproportionate to the offense may demand to the

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a. Administering an Article 15 does not eliminate a commander imposing various administrative ‘sanctions’, such as a letter of reprimand (memorandum of reprimand), known either as a LOR or MOR, a bar to re-enlistment, revocation of security clearance, adverse counselings, etc. Moreover, as NJP, it does not form double jeopardy from a subsequent court-martial though the Article 15 would have to be dealt with in regards to the court-martial process. That said, very seldom does the Government bring a courts-martial unless the facts underlying the charges become aggravated warranting a court-martial.

b. All charges that might be in existence at the time of the Article 15 should be brought forward into one Article 15. Any single conviction on any allegation supports any disposition by the commander within the commander’s authority.

c. Under the Oregon Code it is stated in part that “Commanding officers shall consider all available administrative measures to address misbehavior before resorting to non-judicial punishment (NJP) or other punitive action. Administrative measures include, but are not limited to: 1) Removal from leadership position; 2) Written reprimand or admonition; 3) Written counseling; 4) Corrective training; 5) Bar to re-enlistment; 6) Termination of temporary military orders; 7) Denial of pass or privilege; and 8) MOSIAFSC reclassification. Commanding officers further are strongly encouraged to use the lowest level discipline that adequately and appropriately will address the misbehavior at hand. Commanding officers should first consult with the Office of the Staff Judge Advocate (OSJA) or with a unit-assigned Judge Advocate before holding an Article 15 hearing, unless extraordinary circumstances of time or place exist. OSJA or a unit-assigned Judge Advocate shall discuss all available and appropriate administrative and disciplinary measures for a particular matter, advise the commander whether the evidence substantiates an allegation of misconduct and assist commanders and their staff with the preparation of documents for counseling and for any substantiated and warranted NJP.” This follows guidance under the UCMJ and is appropriate under any jurisdiction.

6. Article 15 documentation. Along with a DA Form 2627, you should have received your commander’s supporting documents. These are the reports or statements upon which he had based his decision to offer you an Article 15. If you don’t have these with you, inform the JAG or paralegal assisting you that you need this evidence. Prior to JAG contact you can ask the unit S1 to provide such documents. You should seek to make sure that the command gives you these documents prior to your making your decision.

a. On the first line of the form, ensure that all information about you is correct. Be sure your base pay is correct because any forfeitures of pay you may receive will be based on this amount.

commanding officer, within five (5) days after the punishment is either announced or sent to the accused, a de novo review of the findings and/or punishment adjudged. Upon such a demand, any adjudged punishment shall be stayed and the Article 15 hearing record, **all evidence and any supporting documents shall be promptly forwarded to the next superior authority of the grade of major or higher. Upon receipt, the next superior authority shall first obtain a written legal review on the matter and, after providing the accused an opportunity to be heard, make a written decision on: 1) whether to uphold or reverse any finding of guilt, and 2) whether to uphold or reduce any adjudged punishment.**” ORARNGR 27-5.

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b. Block 1 of this form contains a description of the offense or offenses you have allegedly committed. In theory these should reflect true wording and the rough elements from the offense under the UCMJ or SCMJ. Read the charges carefully and think through your response to them. Looking at the actual charge as set forth in the UCMJ/SCMJ may be helpful in understanding the allegation including any weaknesses in the Governments assertion for lack of evidence on a particular element in the allegation.

c. In Block 3 of DA Form 2627, the first decision you must make is whether to have your case resolved by Article 15 procedures or whether to request a trial by court-martial³. Electing to have your case resolved by Article 15 procedures does **not** mean that you are admitting guilt; it means that you want your commander to be the person who decides whether you are guilty, rather than a judge or a jury. If you are thinking of asking for a court-martial, you MUST talk with a military attorney before you make the decision. There are serious consequences with even facing a court-martial let alone the significantly greater sanctions that are possible. Should you decide to have your case resolved by Article 15 procedures, you have additional decisions to make in Block 3. a) You may also choose whether the hearing is open or closed. An open hearing means that anyone can observe the proceedings. A closed hearing means that only you, your commander, the witnesses for you and the witnesses against you are eligible to be present for the hearing. *It is still up to the Commander on whether to honor a closed hearing request.* b) You may choose to have someone speak on your behalf if you wish, that is, do the talking for you and explain your side of the story to the commander. You are not authorized a military attorney to represent you in an Article 15 hearing. However, you may hire a civilian counsel to represent you. In many cases, however, your military lawyer will sufficiently prepare you to represent yourself. If you feel unprepared after speaking to your military lawyer, a civilian lawyer could also assist you in preparing for the Article 15 hearing. c) You must also decide whether to present matters in your defense, mitigation, or extenuation.

1. For the hearing be prepared with Evidence in your defense would be something related directly to the offense you have been charged with that shows you are not guilty of it.

2. Give the commander a list of witnesses well before the hearing so that the commander can try to make them available. When you have decided which witnesses you wish to bring before the commander and exactly what evidence you wish to present, it is a good idea to make a list of the witnesses and determine an order which you'd like them to testify. You have the right to have witnesses testify, assuming that they are reasonably available. The better organized your case is, the better chance you will have of defending yourself and avoiding punishment or receiving a lesser punishment. Any documents you may have that would support your version of the facts may be presented during the hearing to your commander. He should listen to all your witnesses and consider all your evidence before coming to a decision.

3. Be prepared to provide evidence in Mitigation which refers to testimony or statements from people that know you as to your character, performance of duty, or other positive aspect about you.

4. Be prepared to provide evidence in Extenuation which regards matters to the offense which tend to make the offense less severe (like an excuse).

d. You should sign and date the form in the signature Block next to your typed name and grade.

e. After your hearing, if your commander finds you guilty of an offense, he should give you an opportunity to present matters that will help him decide what punishment is appropriate for you. You

³ See paragraph 5. In Oregon, the right to demand Courts-Martial is from a Field Grade Officer only, and for Company Grade Article 15's, the right is of a de novo review and hearing.

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may request that all or part of the punishment be suspended. Remember, that if you commit further misconduct during the period of suspension, you will have the suspended punishment imposed AND could be given a second Article 15 for the additional misconduct. Your commander will enter the punishment imposed in Block 4.

7. Jurisdiction.

- a. In Federal Title 10 status, AD and USAR Soldiers are subject to the UCMJ whenever in duty status, and for AD that is 24/7/365, and wherever the offense occurs.
- b. For State status, jurisdiction is subject to the language in the state code. In Oregon, jurisdiction for offenses under the code exist when the offense was committed while the person was in a duty status during a period of time in which the person was under lawful orders to be in a duty status; or if the offense charged has a connection with the military status or assignment of the person, specifically including offenses for offenses for which there is no equivalent offense in the general criminal laws of this state and for offenses involving wrongful use, possession, manufacture and distribution or introduction of a controlled substance described in article 112a, also wherever the offense occurs.
- c. Jurisdiction is also subject to nuances in the law in geographical areas where there is overlapping jurisdiction for an offense, such as a National Guard Unit operating out of state on a Federal military training area, without exclusive jurisdiction over the state in which the Federal installation exists. This can lead to Federal, State, Federal Military, and Home State National Guard jurisdiction, ordinarily with a 'pecking' order of who can take, or assume jurisdiction.

8. There are other aspects of Article 15s you should understand before you make your decision:

- a. The level of proof is the same at both an Article 15 hearing and a court-martial; the commander must be convinced of your guilt by the evidence presented "beyond a reasonable doubt" before you can be found guilty. That said, the typical commander is not going to get too deep into whether they have the necessary legal level of proof to convict at an Article 15. "Reasonable Doubt" has a tendency to have a more broad definition in application at an Article 15 mostly because the commander is typically not legally trained in such analysis and will be more accepting of evidence that might not be admissible in trial (eg, hearsay).
- b. Whatever the outcome of the hearing, an Article 15 is not considered a conviction and will not appear in your civilian record. On the other hand, if you demand a trial by Courts-Martial and you are **convicted**, this would be a federal or state conviction that would stay with you even after you leave the Army. The exception would be a 'Summary Courts-Martial' (SCM) which does not result in a conviction for such purposes.
- c. You will not receive a military lawyer to represent you at the Article 15 hearing. However, there is also no military prosecutor at an Article 15 hearing. You should not find a Trial Counsel directly participating in an Article 15 proceeding for the commander, but there might be one there to answer questions the commander has about process and so long as they remain not an advocate at the hearing that should not be a problem. At a court-martial, you most likely would be entitled to be represented

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by a military lawyer at no cost to you, but there would also be a prosecutor present. Under either an Article 15 or a court-martial, you have the right to hire civilian counsel to represent you.

9. If I agree to accept the Article 15, am I admitting guilt?

No, you are only agreeing to let your commander decide whether you are guilty and, if guilty, what punishment you should receive. If you plead not guilty, your commander must listen to your side of the case. You may present your own case or have a non-lawyer act as your spokesman. You can present witnesses or other evidence (such as statements, police reports, pictures, and diagrams) on your behalf to help explain your side of the story. You may also present evidence regarding your duty performance, reputation for truthfulness or honesty, and other facts that indicate you are not guilty or deserving of a light sentence.

10. Why should I accept the Article 15 rather than demand trial by court-martial?

Possible maximum punishments at an Article 15 are much lower than what a court-martial could adjudge. For example, you cannot be sentenced to confinement at an Article 15 hearing. Also, even if found guilty at an Article 15 hearing, you still have no federal conviction with a court-martial conviction. Additionally, most Article 15s (especially first time Article 15s for minor offenses) won't affect your ability to remain in the Army. Court-martial convictions can result in discharge, either by a punitive discharge adjudged by the court or administrative discharge after the court-martial.

11. What are the different types of Article 15s and what are the maximum punishments?

a. There are three types of Article 15s, Summarized, Company Grade and Field Grade. Some states may not have Summarized Article 15's in their code. Disposition by General Officers as 'Field Grade' Article 15s typically have significantly greater Authority.

b. In Oregon, there is no provision for Summarized Article 15s. Under the OCMJ, the possible punishments described in the code for Enlisted personnel are:

1. Company Grade –
 - a. an admonition;
 - b. a reprimand;
 - c. the withholding of privileges for not more than six (6) months which need not be consecutive;
 - d. the forfeiture of pay of not more than seven (7) days' pay;
 - e. a fine of not more than seven (7) days' pay;
 - f. a reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but the officer imposing the reduction need not have actual authority to promote the member on whom the reduction is imposed;

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g. extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; but to be completed within 90 days of the date punishment was imposed; and

h. restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

2. Field Grade (major or above) –

a. an admonition;

b. a reprimand;

c. the withholding of privileges for not more than six (6) months which need not be consecutive;

d. the forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months;

e. a fine of not more than one (1) month's pay;

f. a reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but the officer imposing the reduction need not have actual authority to promote the member on whom the reduction is imposed and an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

g. extra duties, including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed; and

h. restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

3. Officers. Any commanding officer may, in addition to or in lieu of admonition or reprimand, impose upon officers of the command the following disciplinary punishment for minor offenses without the intervention of a court-martial:

(1) Restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive duty or drill days; but to be completed within 90 days of the date punishment was imposed.

4. The Governor, The Adjutant General, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose upon upon officers of the officer's command –

a. reprimand, or

b. admonition, and or

c. the forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months;

e. a fine of not more than one (1) month's pay;

f. restriction to certain specified limits, with or without suspension from duty, for not

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more than sixty (60) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

g. arrest in quarters for not more than thirty (30) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

c. Generally, the Federal AD Title 10 Article 15, applying to both AD and USAR, has the following possible punishments:

1. Summarized. Any company grade commander may administer this type of Article 15. Soldiers who are read a summarized Article 15 are not entitled to consult with a defense attorney. They may, turn down the summarized Article 15 and demand trial by court-martial; but, normally this is not a good idea! The maximum punishment authorized at a summarized Article 15 is any combination of:

- a. extra duty for 14 days
- b. restriction for 14 days
- c. oral reprimand or admonition

2. Company Grade. Any company grade commander may administer this type of Article 15. The maximum punishment authorized at a company grade Article 15 is any combination of:

- a. extra duty for 14 days
- b. restriction for 14 days
- c. oral reprimand or admonition
- d. forfeiture of seven days base pay
- e. reduction in rank of one grade (E-4 & below only)

3. Field Grade. A commander in the rank of major or above may administer this type of Article 15. The maximum punishment authorized at a field grade Article 15 is:

- a. extra duty for 45 days
- b. restriction for 60 days (maximum of 45 days if combined with extra duty)
- c. oral reprimand or admonition
- d. forfeiture of one-half base pay per month for two months
- e. reduction in rank to E-1 (E-4 and below) or reduction in rank of one grade (E-5 & E-6 only)

12. If I am found guilty at the Article 15, when does the punishment begin?

Usually the punishment begins immediately, even if you appeal the Article 15. The commander may, however, delay starting the punishment under certain circumstances (leave, illness, AWOL, field exercise). If you appeal the Article 15 and no decision is made within 5 calendar days, you can request that any punishment involving extra duty or restriction be interrupted pending the outcome of the appeal.

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13. What is suspended punishment?

Your commander may suspend any or all punishment for a period not to exceed six months. If the punishment is suspended, it does not take effect. You are, in essence, on "probation" for the suspension period. As long as you do not engage in any misconduct, the suspended punishment will not take effect. However, if you engage in misconduct of any kind, the commander can withdraw (vacate) the suspension and the original punishment takes effect. You do not have a right to contest or appeal the vacation of the suspension. Furthermore, the violation action will not preclude further judicial or nonjudicial punishment for the same misconduct.

14. Can I appeal the decision my commander makes at the Article 15 proceeding?

If you are found guilty during an Article 15 hearing, you have the right to appeal to the next higher commander. For Oregon, from a Company Grade Article 15, if you check appeal that invokes the de novo review and hearing from the next level commander. The Soldier can waive the opportunity for the in person appearance since the appellate commander must merely provide an opportunity for hearing. For example, if the imposing commander is your company commander, the appellate authority is usually the battalion commander. The appeal must be submitted within five days of your hearing. There are three grounds for appeal: (1) there was not enough evidence to find you guilty; (2) the punishment imposed was too severe; or (3) the commander did not follow proper procedures. The commander considering your appeal can overturn a finding of guilty, lessen the punishment or keep the punishment the same. The commander acting on your appeal cannot make your punishment more severe.

15. How do I appeal?

You appeal by checking the appropriate block on Line 7 of DA Form 2627 immediately after your imposing commander announces your punishment. He will ask you whether you want to appeal. If you wish to appeal, it is recommended that you check Block 7(c) which states "I appeal and submit additional matters." If you are not sure if you want to appeal, we recommend you go ahead and check the "I appeal" block. Appeals are normally made in writing, stating the reasons for the appeal and why relief should be given. If you need assistance preparing an appeal, contact the Trial Defense Service. A soldier can request to appear in person at the appeal, but the appeal authority does not have to approve the request, except in Oregon as to Company Grade Article 15 appeals.

16. Will a finding of guilty at an Article 15 hearing be filed in my military records?

a. A finding of guilty at an Article 15 hearing will be filed in your military records; however, the rules vary depending on your rank.

b. If you are in the grade of E4 and below, the Article 15 will be filed locally in non-judicial punishment files. The Article 15 will be destroyed two years from the date of imposition or upon your PCS/ETS, whichever occurs first.

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c. If you are in the grade of E-5 or above, the imposing commander will determine whether the Article 15 will be filed in either the restricted or performance fiche of your Official Military Personnel File (OMPF). Article 15s filed in your OMPF will likely have adverse affects on your future military career. Consult the Trial Defense Service for more details regarding the career ramifications of this important filing determination. It is possible to petition the Army to transfer or remove Article 15s in your OMPF. Again, consult the trial defense service for more details in how to transfer or remove Article 15s from your official record.

17. Where can I get additional information about Article 15s?

The Article 15 process is discussed in detail in Part V of the Manual for Courts-Martial (MCM) and in Chapter 3 of AR 27-10; and for Oregon in ORARNG 27-5. The MCM, ORARNG 27-5 and AR 27-10 are available for review on line at Oregon.gov/OMD/JAG.

18. The 4133 RDC, RSDC and 653d Oregon TDC can be emailed at NGOR.JAG.4133.TDS@ng.army.mil. For OREGON ARMY NATIONAL GUARD ONLY, the Oregon 653d Trial Defense Counsel message phone number is 503.269.5523. The unit Website is located at <http://www.oregon.gov/OMD/JAG>. Nothing herein is legal advice, and the information herein does not replace the advice of an Attorney, and should not be acted upon without reviewing original source documents.

19. POC for this memorandum is the current Regional Defense Counsel.

Original Signed

DANIEL J. HILL
COL, JA
Regional Defense Counsel