



# Trial Defense Service

FORT KNOX FIELD OFFICE

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## ARTICLE 15 PROCEDURES

***Note: This handout only provides basic information and is not intended to serve as a substitute for personal consultation with an attorney.***

You have been informed that your commander has started Nonjudicial Punishment (“Article 15”) proceedings against you. This sheet is designed to help you understand the DA Form 2627 (the “Article 15” form) and to prepare you for the briefing you will receive at the TDS office. If after reading this paper and hearing the briefing, you have any questions whatsoever, please ask the attorney you meet with at TDS.

**You should have your DA Form 2627 (signed by the initiating commander) and all supporting documents with you when you go to your TDS appointment.** Supporting documents are reports and/or statements upon which your commander based his/her decision to initiate Article 15 proceedings against you. You will be afforded the opportunity to review these documents prior to making any decisions. Please inform the TDS Paralegal if you do not have these documents.

### **REVIEWING THE DA FORM 2627.**

1. The top portion of the form contains your personal information. Make sure this information is correct. Also make sure your base pay is correct. Any forfeiture of pay imposed as punishment will be based upon this amount.
2. Block 1 of this form contains a description of the offense or offenses you have allegedly committed. Read the charges carefully and consider your response to each.
3. Block 2 must be signed by the initiating commander, telling you the level of Article 15 you are facing (company grade or field grade).
4. In Block 3 should be filed out by you only after you have had the opportunity to speak with an attorney. You must decide whether to have your case resolved by an Article 15 proceeding or whether to request a trial by court-martial. Electing to have your case resolved by an Article 15 proceeding **DOES NOT** mean that you are admitting guilt; it simply means that you want the initiating commander to decide whether you are guilty or not, rather than a judge or jury.

### **THINGS YOU SHOULD UNDERSTAND BEFORE MAKING THIS DECISION.**

1. The level of proof is the same at both an Article 15 hearing and a court-martial; all must be convinced of your guilt by the evidence presented “beyond a reasonable doubt” before you can be found guilty.
2. 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 and are **convicted** at a trial by Courts-Martial, this is considered a federal conviction that will stay with you even after leaving the Army.

3. Although you meet with an attorney to prepare for the Article 15 hearing, no prosecutors or defense attorneys are involved in the Article 15 hearing; you are your own representative. However, should you demand trial by court-martial, you will most likely be entitled to representation by a military attorney at no cost to you. There will also be a prosecutor present, as well.

4. The maximum punishment you could possibly face as a result of conviction by a court-martial could be confinement, reduction to the grade of E1 (regardless of your current pay grade), forfeiture of two-thirds of your pay each month for 6 months, and a Bad Conduct Discharge. The **maximum** punishment for Article 15s are listed below:

	<u>COMPANY GRADE</u>	<u>FIELD GRADE</u>
Restriction:	14 days	60 days
Extra Duty:	14 days	45 days
Pay Forfeiture	7 days	1/2 of a month pay for 2 months in a row
Rank Reduction (E4 & below)	1 grade	1 or more grades
Rank Reduction (E5 & E6)	None	1 grade (from BN CDR only)
Rank Reduction (E7 and up)	None	None

(If the officer imposing the Article 15 is a CPT or below, normally the Article 15 is a Company Grade. If the imposing commander is a MAJ or above, the Article 15 is a Field Grade.)

(If you receive both restriction and extra duty, they must be served at the same time. If you receive 45 days extra duty for a Field Grade Article 15, your restriction will not exceed 45 days.)

**If you are considering requesting a trial by court-martial, do not make that decision without speaking with an attorney first.**

4. Additional decisions should be made in Block 3, should you decide to have your case resolved by an Article 15 proceeding.

a. You must 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, and witnesses for or against you are eligible to be present.

b. You may choose to have someone speak on your behalf, that is, to do the talking for you and explain your side of the story to the commander. As previously stated, you are not authorized an attorney to represent you in an Article 15 hearing.

c. You must also decide whether to present matters in defense, mitigation, or extenuation.

**Evidence in your defense** simply means evidence related directly to the offense you have been charged with that shows you are not guilty.

**Mitigation** is testimony or statements from people who know you. They speak to your character, performance of duty and other positive aspects about you.

**Extenuation** means circumstances related to the offense that tend to make the offense less severe (similar to an excuse).

5. After you make the elections, sign and date the form next to your typed name in block 3.

6. When you have decided which witnesses you wish to bring before the commander to speak on your behalf, you should make a list of the witnesses and determine an order in which you'd like them to testify. An example of a witness request is available on our website. You have the right to have witnesses testify, assuming that they are reasonably available.

Present any documents you have to support your version of the facts during the hearing with your commander. He/she should listen to all of your witnesses and consider all of the evidence presented on your behalf before making a decision. The better organized your case is, the better chance you have of defending yourself and avoiding punishment or receiving a lesser punishment.

7. After your hearing, if your commander finds you guilty of an offense, he/she should give you an opportunity to present matters that will help determine which punishment is appropriate for you.

a. If reduction in rank and/or forfeiture of pay will make your financial situation worse, you can use the Personal Financial Statement (available on our website) to demonstrate your financial difficulty to the imposing commander.

b. You can request that all or part of your punishment be suspended. Bear in mind 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.

8. After hearing all the evidence presented by you, your commander will announce his/her findings and note those in block 4a. Block 4b will be annotated, if applicable, with the filing determination. If you have an Article 15 as an E-5 or above in the past, this Article 15 will automatically be placed in your performance fiche.

9. Your commander will announce the punishment and note it in block 6.

10. You can appeal your Article 15 to the next level of command if you feel you've been excessively punished or evidence on your behalf was not properly considered. **This must be done within 5 calendar days.** If you wish to appeal your Article 15, initial "I appeal and submit additional matters" in Block 5, sign and date that decision. A sample appeal can be found on our website. For your appeal, you should provide written statements from yourself and others to support your position. You are not entitled to a personal appearance before the appellate authority, however, you may request one. If you do not submit statements on your behalf, your version of what happened may not be presented to the appealing authority. The appellate authority can approve the imposed punishment or take action to lessen the punishment, but **MAY NOT INCREASE** the punishment originally imposed.

11. If you do not wish to appeal, initial that block (remember, you may not be allowed to change your mind at a later time if you waive your appeal initially).

If you've been given restriction or extra duty as a punishment and you appeal, you should request that your restriction and extra duty be suspended if the appeal takes more than five days to be decided upon. If your request and the appeal is not decided within 5 days, the extra duty and restriction imposed **MUST** be suspended until the appeal is decided. An example of this request memo can be found on our website.

Should you have further questions or concerns, please do not hesitate to ask your TDS attorney.