

MILITARY DEPARTMENT OF ARKANSAS  
OFFICE OF THE ADJUTANT GENERAL  
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CHAPTER 1 - GENERAL PROVISIONS

1-1 PURPOSE. This regulation, prepared by the Staff Judge Advocates of the Arkansas Army and Air National guard, is issued as a guide and reference for commanders, staff officers and non-commissioned officers in the administration of military justice.

1-2 AUTHORITY. The authority for this regulation is The Constitution of Arkansas and Act 50 of 1969 (Arkansas Statutes annotated, Sections 11-101, et. seq.), as amended by the 73rd General Assembly of 1981, and the 74th General Assembly of 1983, known as the Military Code of Arkansas (MCA).

CHAPTER 2 - NONJUDICIAL PUNISHMENT

SECTION I - APPLICABILITY

2-1 General. A commanding officer may impose nonjudicial punishment for minor offenses upon military personnel of his command under the provisions of Section 59, Military Code of Arkansas, MCA. He should distinguish nonjudicial punishment from nonpunitive disciplinary or administrative measures which include but are not limited to the following:

- (a) withholding privileges,
- (b) denial of military pay,
- (c) conduct and efficiency ratings,
- (d) admonitions and reprimands,
- (e) evaluation or fitness reports,
- (f) reductions for inefficiency,
- (g) denial of reenlistment,
- (h) MOS/AFSC reclassification, or
- (i) administrative separation or discharge.

2-2. Offenses Punishable Under Section 59. The offense in question must be an offense under the MCA. That is, the offensive conduct must have in fact been a crime. The crime committed must also be of a minor nature for nonjudicial punishment to be appropriate. Due regard should be given to all circumstances surrounding the commission of the offense and the member's past record.

2-3. Persons Who May Be Punished. A commanding officer may impose nonjudicial punishment upon commissioned officers, warrant officers, and other military personnel of his command. Punishment may be imposed upon attached as well as assigned personnel, provided that they are ordered to duty in or with the Army or Air National Guard. The term "Commanding Officer" includes commissioned officers and warrant officers, as applicable.

## SECTION II - WHO MAY IMPOSE NONJUDICIAL PUNISHMENT

2-4. General. Nonjudicial punishment under Section 59 may be imposed by any commanding officer, including a warrant officer in command, provided that a superior commander has not restricted or withheld the authority to impose punishment on certain categories of military personnel or offenses. For example, general officers in command often reserve to themselves the authority to impose nonjudicial punishment on all their officers. The commanding officer may not delegate his authority. A detached segment commander, while in a detached segment status, has the same duties and responsibilities under Section 59 as the parent unit commander. An acting commander, while in an acting status, has the same duties and responsibilities under Section 59 as the actual commander. A command officer may impose nonjudicial punishment as outlined in Annex 1. In no case can a superior direct that a subordinate commander take action under Section 59, nor can he dictate to a subordinate the type punishment to be administered under Section 59.

## SECTION III - PROCEDURE

2-5 General. Before taking action under Section 59, the commanding officer must satisfy himself (a) that the alleged misconduct actually took place, (b) that the alleged misconduct was an offense under the MCA, (c) that the accused member of his command committed the offense, and (d) that a Section 59 action is appropriate to the offense, considering the member's past record. These questions should be considered during the preliminary investigation. The investigation will be conducted with all deliberate speed. When the member is restricted pending disposition, promptness is critical to his right to a speedy trial should he demand trial by court-martial.

2-6. Grounds for an Offense. The commander should consult the "Proof" paragraph found under the appropriate punitive article, Manual for Courts-Martial, United States, to determine if a crime has been committed.

2-7. Preparation of AGARK Form SJA 1. Annex 2 contains a sample AGARK Form SJA 1 that has been prepared to assist in the preparation of a Section 59 action.

2-8. Initial Notification. The first step in a Section 59 proceeding is the initial notification to the individual by his commander. The elements of this step are set forth on AGARK Form SJA 1, "Notification of Intent to Impose Nonjudicial Punishment". Annex 3 contains "Suggested Guide for Conduct of Nonjudicial Punishment Proceeding". The initial notification should contain the following elements:

(a) Statement of Offense. The commander who intends to impose the punishment must inform the member of such intent. The initial notification must include a brief statement of the offense which the commander believes the member has committed. The commander should orally describe the offense to the member in simple language which a layman can understand.

(b) Statement of Punishment. The commander will then inform the member of the maximum punishment authorized if nonjudicial punishment is accepted.

(c) Right to Demand Trial by Court-Martial. The member has a right to demand court-martial in lieu of the Section 59 action. The commander must inform him of this right.

(d) Right to Remain Silent. The commander must inform the member that he has a right to remain silent and that anything he says can be used against him.

(e) Opportunity to be Counseled. The commander must inform the member that he has the right to be advised by military counsel, who must be a commissioned officer, concerning the proposed disciplinary action, unless waived in writing. Refer to Annex 4 for a sample waiver. The accused shall also be offered the opportunity to be counseled by military counsel of his choice, who shall be a commissioned officer. The commander must also inform the member that he has the right to employ civilian counsel of his choosing at his own expense.

(f) Time to Reply. The member will be allowed 3 calendar days to reply to the notification of intent to impose punishment under Section 59, unless this period is waived in writing (see Annex 4). The member may submit written justification for a longer period of time and the commander may extend the time in a proper case. The day during which the notice of intent is delivered to the member and the day during which the Section 59 proceeding is conducted shall not be included in computing the 3 calendar day period. If the member fails to reply within the allotted time whether he will accept nonjudicial punishment, the commander may proceed with the punishment, noting the member's failure to reply on the form imposing the punishment.

2-9. Acknowledgement and Rights of the Member. Acknowledgement of rights by the member will be accomplished on page 2 of AGARK Form SJA 1. The subsequent course of the proceeding depends upon the decision the member makes.

(a) Demand for Trial by Courts-Martial. If the member demands a trial by court-martial, the Section 59 action will be terminated. The commander must then decide whether to prefer court-martial charges. The commander need not prefer court-martial charges, but ordinarily will do so.

(b) Waiver of Court-Martial and Submission of Matters. If the member waives court-martial and does not submit matters in his own behalf the commander may immediately proceed to impose punishment.

(c) Waiver of Court-Martial. If the member waives court-martial but submits matters in defense, extenuation, or mitigation, orally or in writing, the commander must consider these matters. If the commander determines that the member is innocent or that there is some other valid reason for not punishing the member, the commander simply terminates the Section 59 proceeding. If after considering the matters the commander is convinced that the member is guilty and that nonjudicial punishment is appropriate, the commander may proceed to impose punishment.

2-10. Imposition of Punishment. (a) Maximum Punishments. Annex 1 outlines the maximum punishment authorized under the provisions of Section 59. An offender who is subject to the MCA and who has been tried in a civil court will not be punished under Section 59 for the same act or acts over which a civil court has exercised criminal jurisdiction. The unit commander must be aware of certain limitations on punishment. Only one of the punishments set forth in Annex 1 may be imposed in each proceeding under Section 59.

(b) Informing the Offender. The officer imposing the punishment will personally announce the punishment to the offender. At this time, the officer imposing punishment should explain the offender's right to appeal and the procedures thereof.

(c) Fines. When a fine is paid, the person receiving the money will cause such money to be transmitted to the Adjutant General within five days after receipt of the money. Annex 5 contains a sample letter of transmittal. The Adjutant General will pay the funds to Treasurer, State of Arkansas, in accordance with Section 171, MCA. If a fine is adjudged and not paid, court-martial proceedings under the original charges will be instituted, as if no Section 59 action had occurred.

(d) Forfeitures. When a forfeiture is imposed as punishment for a violation under Section 59 of the MCA, the commander imposing the punishment is responsible for processing all necessary documentation for deduction and collection from the member's military pay. After a determination has been made that an appeal will not be pursued by the member, either by the passing of 35 days (see paragraph 2-11 (c) (1)), or by receipt of a written waiver by the member, the commander will complete DD Form 114 (Military Pay Order), prepare a letter certifying the imposition of punishment and the amount of forfeiture, and obtain a blank preprinted "8" card (ADP). These documents should then be submitted to the appropriate accounting section (with a regular performance package).

2-11. Responsibilities after Imposition. The full effectiveness of a Section 59 action cannot be realized unless the commander is aware of his power of clemency and of his responsibilities in the event the member decides to appeal.

(a) Execution of Punishment Pending Appeal. If the member files a timely appeal, the member may be required to undergo the punishment adjudged during pendency of the appeal.

(b) Clemency. A commander imposing punishment under Section 59 has the power to suspend, remit, mitigate, or set aside that punishment if he finds that this action is warranted by the circumstances. These powers give the commander an effective means of rehabilitating the offender, which is often more valuable than his power to punish. See Annex 6 for example of indorsements to be used in connection with the powers stated in this paragraph.

(1) Suspension. When punishment is suspended, held in abeyance, or not put into effect for a specified period of time, a probationary period follows, which gives the member an opportunity to demonstrate his good conduct and efficiency. It provides him with an incentive to stay out of trouble. The unexecuted portion of any punishment may be suspended for a reasonable time not to exceed 6 months. Suspension may be considered in all cases, but it is most effective in the case of the first offender. The commander should understand that no favorable personnel actions may be taken during the period of suspension. If during the period of suspension the member commits further acts of misconduct, the suspension may be vacated (terminated) and the original punishment placed into effect. See Annex 6 for an example of an indorsement vacating acts of clemency.

(2) Mitigation. The severity of the punishment may be reduced by extenuating circumstances relating to the offense or when the member has demonstrated by previous record of good conduct and efficiency that he merits a reduction in punishment.

(3) Remission. Remission is the cancellation of the unserved portion of the punishment. This action may be taken by the commander when remission would be appropriate.

(4) Setting Aside. The commander may "set aside" an action taken under Section 59 when it is clear that an injustice has occurred. All rights and privileges are returned. This type of action would be necessary in a case where new evidence or information indicates that the member was innocent.

(c) Appeals. Every member who receives punishment under Section 59 has the right to appeal the punishment. This right does not conflict with his "consent" to the Section 59, for his consent is merely a waiver of his right to demand trial by court-martial and is not an admission of guilt. The appeal should be processed promptly. Upon appeal by the offender from the punishment imposed under Section 59, the next superior commander can approve or reduce, but not increase, the punishment imposed by the member's commander. Lengthy delays in handling appeals may deprive the member of constitutional rights and undermine the military justice system.

(1) Action by Officer Imposing Punishment. Appeals should be submitted within a reasonable time after imposition of punishment. In the absence of unusual circumstances, 35 calendar days is considered a reasonable time. The accused is entitled to submit oral or written statements concerning the offense or the appropriateness of the punishment. The commander should consider any statements submitted and, if warranted, modify the punishment imposed. Essentially, the commander should treat the appeal as a request for reconsideration. If additional action such as suspension, mitigation, or remission is taken, the

commander should then ask the member if he wishes to withdraw his appeal voluntarily. If the member refuses, or if the commander takes no modification action, the appeal must be forwarded to the next higher commander. If forwarding is necessary, the commander should insure that the member receives whatever assistance he may need in preparing the appeal, including the preparation of any written statements the member wishes to be considered by the reviewing authority.

(2) Forwarding the Appeal. The commander should complete the necessary portions of AGARK Form SJA 1, and he should make any comment he considers necessary to rebut a statement made by the member. The file will be forwarded to the immediate superior who is responsible for taking action on the appeal.

(d) Announcement of Results. In order to be effective, the system of military justice must function properly. Any announcement of Section 59 dispositions are discretionary with the commanding officer imposing the punishment, and he must consider the impact on unit morale and the impairment to job or leadership effectiveness of the individual concerned.

2-12. Records of Punishment. When punishment is imposed under Section 59, all actions taken will be recorded on AGARK Form SJA 1, or on indorsements thereto. This recordation will include notification, acknowledgement, imposition of sentence, action on appeal, and any other action.

2-13. Distribution and Filing of AGARK Form SJA 1. Copies of any written statement or other documentary evidence pertaining to the case which has been considered by the officer imposing the nonjudicial punishment will be attached to each AGARK Form SJA 1. Distribution and filing of forms will be as follows:

- (a) Original. Unit of assignment for filing in the military personnel records of the individual.
- (b) First Copy. Person punished.
- (c) Second Copy. For commander's use.
- (d) Third Copy. Appropriate headquarter, SJA.
- (e) Fourth Copy. State Judge Advocate, Office of The Adjutant General.

2-14 Time of Distribution. Distribution will be made upon receipt of the form after completion by the member, if he does not appeal. If the member does appeal the punishment, the form will be forwarded for action on the appeal. The completed form will be distributed as above directed, after its receipt and after its acknowledgement by the member of the action on appeal.

CHAPTER 3

COURTS-MARTIAL

SECTION I - THE COURTS-MARTIAL SYSTEM

3-1. Objective of System. The general purpose of the Military Code of Arkansas (MCA) and the courts-martial system is to establish a system of prohibitions, penalties and correctional measures to deal with conduct that threatens good order, discipline and public safety in the State Military Forces. The specific objectives are as follows:

- (a) to insure good order, discipline and public safety through:
  - (1) deterring future misconduct;
  - (2) rehabilitating; and
  - (3) punishing, as may be necessary, to prevent likely recurrence;
- (b) to define offenses to give fair warning of what is prohibited and the consequences of violation;
- (c) to prescribe penalties that are proportionate to the seriousness of offenses and to permit recognition of differences in rehabilitation possibilities among individual offenders;
- (d) to assure that persons whose conduct deviates from acceptable standards, but who are not guilty of committing offenses, are not improperly charged;
- (e) to guide and limit the exercise of official discretion in law enforcement, and to prevent arbitrary or oppressive treatment of members accused or convicted of offenses; and
- (f) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state military justice jurisdiction.

3-2. The Courts-Martial System. Because the unit commander is primarily concerned with the summary court-martial, this Chapter emphasizes summary court-martial procedures. However, the guidelines contained herein will in most instances apply to special and general courts-martial. The summary court-martial is designed to handle relatively minor offenses and provides simplified procedures. It consists of one officer, who will be the summary court-martial officer. For maximum punishments imposable by a summary court-martial, see Annex 7. An accused will not be tried by summary court-martial over his objection, but may be referred for trial by a special or general court-martial. For jurisdiction of special and general courts-martial, see Sections 62 and 63 of the MCA. Any special or general courts-martial conviction is a state court conviction.

SECTION II - DISPOSITION OF OFFENSES

3-3. General. The unit commander is responsible for enforcing the law and protecting the rights of the individual member.

3-4. Recognizing Criminal Conduct. In the Organized Militia, the Military Code of Arkansas defines the type of conduct for which a member may legally be punished. A member's conduct may be substandard or personally offensive without being a crime.

3-5. Sources of Information. A commander may receive information from many sources that an offense has allegedly been committed by one of his members. For example, the commander may witness an alleged offense; someone within the unit may report an alleged offense; a report of investigation may bring the offense to the commander's attention; or a higher headquarters may forward a report for action. When a superior commander asks that an alleged offense be investigated, the request must not be construed as a directive to take disciplinary action.

3-6. Command Responsibilities. Regardless of how the commander learns of an alleged offense, he must insure that the matter is promptly and adequately investigated.

(a) The investigation should provide the commander with sufficient information to make an appropriate disposition of the allegation.

(b) Once the preliminary investigation is completed the commander must make his decision. He may decide to:

- (1) take no action;
- (2) take administrative action;
- (3) impose nonjudicial punishment under Section 59, MCA;
- (4) prepare court-martial charges against the accused.

3-7. Individual Rights. There are several fundamental rights which must be considered in any case involving criminal conduct.

(1) Presumption of Innocence. Every person is presumed innocent.

(b) Search and Seizure. Both the State and Federal Constitutions protect every citizen from unreasonable searches and seizures.

(c) Self Incrimination and Right to Counsel. Our laws provide that no one may be compelled to incriminate himself and that anyone suspected of having committed a crime has the absolute right to consult with a lawyer. Although not required by the MCA, enlisted members charged by summary court-martial shall have the right to counsel, which may be waived. It is not required that trial counsel and defense counsel in summary courts-martial be members of the Judge Advocate General's Corps, although they may be requested by contacting the staff judge advocate at the appropriate headquarters.

(d) Speedy Trial. The right to a speedy trial is guaranteed by the Constitution of the State of Arkansas and the Constitution of the United States.

(e) Adversary System. At a court-martial, the trial counsel represents the State of Arkansas, and the defense counsel represents the accused. Before a summary court-martial is detailed, the convening authority may contact the staff judge advocate at the appropriate headquarters for guidance on the detail of the summary court-martial officer, and the convening authority shall contact the staff judge advocate at the appropriate headquarters if the accused has requested appointment of a Judge Advocate General's Corps defense counsel. If the accused, having been offered counsel, waives counsel, then trial counsel and defense counsel need not serve. See Annex 8 for "Warnings and Waivers Concerning Summary Court-Martial." The waiver executed by the accused will be attached to the record of trial.

SECTION III - PREPARATION OF CHARGE SHEET  
(AGARK Form SJA 2)

3-8. General. The charge sheet is the basic document for court-martial action. In preparing charges for trial by court-martial, the commander should use AGARK Form SJA 2. (See Annex 9) This form is prepared in an original and four copies. The preparation of the charge sheet is a critical legal function and should be done in consultation with a legal officer or staff judge advocate whenever possible. Once the charges and specifications have been prepared and signed under oath, they are a public record and will not be altered without judicial authority. The charge sheet consists of four pages.

3-9. Charge Sheet. Annex 9 contains a key numbered charge sheet and a key number explanation to assist in preparation of the charge sheet.

3-10. Administrative Data. (a) Personal Data. The first one-third of Page 1 contains personal information concerning the accused. The accused's "grade or rank" is the military title (e.g., PFC) and "pay grade" is the numerical designation (E-3). Home address refers to the last known address of the individual. The initial date of the accused's current service is the date of latest enlistment. All other military service as found in the personnel records of the accused will be recorded in the section "prior service".

(b) Witnesses. The name and address (unit organization and home address) of every witness should be listed on Page 1 under "Data as to Witness". All witnesses will be shown as witnesses for the "prosecution", unless the witness is one whom the accused has requested by name to give a sworn statement or to attend the trial and testify.

(c) Documents and Objects. The commander should list all documents or objects which are items of evidence. A clear identification of the item should be given, along with the current location of the item.

(d) Data as to Restraint. This is the last item on Page 1.

NOTE: Pretrial confinement should be avoided unless it is absolutely necessary to insure the accused's presence for trial, or it appears that he may injure himself or others if he is not confined. The State Judge Advocate shall be notified within 24 hours of imposition of pretrial confinement.

3-11. Charges and Specifications. (a) General. The most important part of the charge sheet is Page 2. This page contains the charges and specifications. The "charge" indicates the section of the Military Code of Arkansas violated. The "specification" under the charge states the facts and circumstances which constitute a violation of that section of the MCA. There may be more than one specification under a single charge. There also may be more than one charge on a charge sheet. The charges and specifications must be written so that they clearly advise the accused of the date, time, place and circumstances of each alleged offense.

(b) Sample charges and Specifications. Annex 10 contains sample charges and specifications for some of the more common offenses. Particular care will be exercised to insure that charges and specifications are legally and technically correct. Sample charges and specifications for all offenses, are contained under the corresponding punitive article in part IV of Manual for Courts-Martial, United States (1984).

(c) Legal Advice. If the commander has any question in the selection or drafting of charges and specifications, he will contact the appropriate staff judge advocate.

3-12. Related Papers. In addition to the charge sheet, certain related papers must be prepared and forwarded by the commander. The following documents should be attached to the charge sheet.

(a) Report of Investigations. Reports prepared by the military police or investigators, if available, should be forwarded with the charges.

(b) Witness statements. Copies of available witness statements and summaries of expected testimony will be forwarded with the charge sheet. Witness statements should be sworn.

(c) Available Documentary and/or Physical Evidence. In order to safeguard documentary evidence, originals of documents will not be forwarded with the charge sheet; however, copies of the originals will be attached to the charge sheets. Physical evidence will not be forwarded. Information as to the exact location of original documentary and/or physical evidence will be shown on the charge sheet in the "Documents and Objects" section.

3-13. Preferral and Transmittal of Charges. Page 3 of the charge sheet outlines the processing of charges through the chain of command to trial by court-martial.

(a) Preferral. Any person subject to the MCA may be an accuser. The signing must be done in the presence of a commissioned officer authorized to administer oaths under Section 164, MCA. All commissioned officers of the organized militia are hereby designated as persons who are authorized under Section 164 (9), MCA, to administer oaths for the purpose of military administration and military justice, whether they are in a duty or non-duty status. The accuser must take the oath described in Item 23 of the charge sheet.

(b) Reading charges to the Accused. After the charges have been preferred, the commander or his representative must read the charges and specifications to the accused. He will also advise the accused of his rights and should use for that purpose the form shown in Annex 8 (AGARK Form SJA-2a). The commander or his representative then completes the certificate in Item 24 of the charge sheet. (see paragraph 3-17 for additional instructions if pretrial confinement is ordered.)

NOTE: If the accused is not immediately available, processing of the charge sheet should continue and the requirement to complete Item 24 should be satisfied at a later time.

3-14. Summary Court-Martial Data (Page 4). The commander must complete the first section of page 4. He indicates in this section whether the accused was offered punishment under Section 59. The "Record of Trial by Summary Court-Martial" portion of the charge sheet is used when the accused is tried by summary court-martial and is completed by the summary court officer. The remainder of the charge sheet will be completed after the trial and review are completed.

#### SECTION IV - TRANSMITTAL OF CHARGES AND PRE-TRIAL ACTION BY CONVENING AUTHORITY

3-15. Letter of Transmittal. This is the letter used to forward the charge sheets and related papers to the court-martial convening authority. This letter contains information about the accused and the commander's specific recommendation for disposition of the charges. The commander should personally sign the letter of transmittal and attach one copy to each set of the charge sheet and related papers. The commander must bear in mind that charges against an accused should be tried by the lowest court which has the power to adjudge an appropriate and adequate punishment. See Annex 11 for sample "Letter of Transmittal of Court-Martial Charges."

3-16. Time Limits. Prompt disposition of charges is essential to an efficient system of military justice. An unexplained delay in the processing of charges at any stage may result in dismissal of the charges. The following are guidelines for avoiding delays in the processing of court-martial charges:

(a) Hand-carry or send by certified mail, return receipt requested, all court-martial files to higher headquarters.

(b) Investigate an incident immediately after it happens, including the interview of all witnesses and obtaining written statements.

(c) Do not allow a case to become inactive in the unit because of other duties.

(d) At any stage of the proceeding, the commander should call a staff judge advocate for advice if he has questions.

3-17. Pre-Trial Confinement. Pre-trial confinement may be accomplished with or without a warrant.

(a) Pre-Trial confinement without a warrant is usually accomplished by a commissioned officer.

(b) Pre-Trial confinement with a warrant is usually accomplished by a civil officer under the authority of state law and may also be accomplished under the authority of Section 52 and other applicable sections of the MCA. For sample warrant, see Annex 12.

(c) When pre-trial confinement is employed, whether with or without a warrant, charges must be prepared and read to the accused within 24 hours after confinement begins.

3-18. Who May Issue Warrants.

(a) The convening authority of a court-martial,

(b) The president of any court-martial, or

(c) Any summary court officer.

3-19. Apprehension. Apprehension is the taking into custody of a person. An apprehension is effected by announcement of the status or rank of the one apprehending, unless those facts are otherwise apparent, and a notification to the person being apprehended that he is being taken into custody. The simple statement, "You are under apprehension," is usually sufficient. If the offender expresses doubt as to the meaning of apprehension, he may be told he is being taken into custody. Any person authorized to apprehend an offender may secure the custody of the offender until proper authority can be notified. If an offender submits to apprehension, then securing his custody involves only keeping him under observation. However, if an offender resists apprehension, necessary force may be used to secure his custody. Necessary force means only force as is reasonably necessary to overcome his resistance. A person who resists apprehension, or who attempts to escape from custody or breaks arrest commits an offense under Section 138, MCA.

3-20. Persons Authorized to Apprehend or Take Member into Custody. The following persons are authorized under the MCA to apprehend or take a member of the Organized Militia into custody:

- (a) All military police while in service of the State;
- (b) Any marshal of a court-martial appointed pursuant to the provisions of the MCA;
- (c) Any peace officer authorized to do so by Arkansas law upon reasonable belief that an offense has been committed and that the person apprehended committed it; and,
- (d) Any other person authorized by the MCA.

3-21. Action Upon Receipt of Charges by Convening Authority.

(a) Upon receipt of a completed charge sheet, or upon initiating charges himself, the convening authority completes and signs the receipt of charges, Item 25 on Page 3 of the charge sheet.

(b) The convening authority must then decide whether the charges justify referral to a court-martial.

(c) Referral. The portion of page 3 designated as the 1st Indorsement is completed by the appropriate court-martial convening authority. This action "refers" the charges to a specific court-martial for trial.

(d) Service by Trial Counsel. The last item of page 3 is not completed in case of a summary court-martial. In all other cases it will be accomplished and completed by the trial counsel.

3-22. Action When Charges are to be Referred to Court-Martial.

(a) The convening authority will insert the case number assigned to that case in numerical sequence, according to the date received or initiated by the convening authority, in Item 31 of the charge sheet. The year of the referral and a consecutive numbering system should be used in the case number (For example, 1984-1; 1984-2, 1984-3, etc.).

(b) The convening authority will insert hour and date of receipt of charges in Item 25 on the charge sheet.

(c) The convening authority will contact the appropriate staff judge advocate to request appointment of the president of a special court-martial, the law officer of a general court-martial, or trial and defense counsel as required to conduct the summary court-martial, special court-martial or general court-martial; and in the case of a summary court-martial the convening authority will appoint the summary court-martial officer.

(d) Upon selection of the members of a court-martial (including the president of special court-martial), the law officer of a general court-martial, or trial and defense counsel of a summary, special or general court-martial, as required, the convening authority will have the necessary orders published appointing the required military personnel to serve in their respective capacities. A sample order is contained in Annex 13.

(e) The convening authority then completes Item 26, which action "refers" the charges to the previously appointed court-martial for trial.

(f) The convening authority will notify the accused of the name, address, and phone numbers of the defense counsel assigned to represent the accused and make necessary arrangements for the accused to contact his counsel. NOTE: If the accused waives his right to military counsel, he must do so in writing. See Annex 8 (page 8-2) for sample waiver. The convening authority will then notify the appropriate staff judge advocate to have such defense counsel released.

(g) The "Record of Trial by Summary Court-Martial" section on page 4 of the charge sheet is completed by the summary court-martial officer. If the accused does not consent in writing to trial by summary court-martial, the charge sheet will be returned to the convening authority with the appropriate notation in Item 35 of the charge sheet.

(h) The remainder of the charge sheet will be completed after the trial and review are completed.

3-23. Action if Accused Does Not Consent in Writing to Trial by Summary Court-Martial.

(a) If the accused does not consent in writing to trial by summary court-martial, the convening authority may:

- (1) Dismiss the charges;
- (2) Convene a special or general court-martial, if he is a proper convening authority; or
- (3) Refer the case through military channels to the appropriate convening authority.

(b) If the summary court-martial convening authority does not dismiss the charges and a special or general court-martial is to be convened, the procedures to be followed by the appropriate convening authority will be those provided in the MCA and in the federal military service of which the accused serves in the reserve component.

3-24. The Convening Authority's Role in Setting Up the Trial.

(a) Prior to the court-martial, trial counsel and defense counsel or the accused will provide the convening authority with a list of military and civilian personnel each desires to call as witnesses. This list will give the name, home address and phone number, business address and phone number, and military unit.

(b) The convening authority will assure that military personnel who are witnesses will attend the proceedings. Not less than ten days prior to the trial, the convening authority will have the subpoena and letter of explanation for each witness delivered to the sheriff of the county where each resides. Examples of subpoena and letter are shown in Annexes 14 and 15.

(c) The convening authority will provide suitable space for the court-martial and provide such administrative support as may be required.

(d) The convening authority will assist in securing necessary documentary and physical evidence needed for the trial.

(e) The convening authority will notify the accused of the time, date and place of the trial. Annex 16 contains a sample "Notice of Trial Setting". The notice will be delivered in person or by certified mail, return receipt requested. If mailed, this notice will be sent in a postage and fees paid envelope and deposited in an office of the United States Postal Service. The notice to such addressee will be mailed to his latest available address as shown on the records of the unit.

#### SECTION V. SUMMARY COURT-MARTIAL PROCEDURE

3-25. Accused Consents to Trial by Summary Court-Martial. If the accused consents in writing to trial by summary court-martial by completing Items 33 and 34 of the charge sheet, the trial may proceed. The summary court officer should follow the procedures set forth in DA Pamphlet 27-7 or Chapter 6, AF Pamphlet 111-6, with changes, in conducting the trial.

3-26. Procedural Steps by Summary Court Officer. The following is a guide for summary court officers in the conduct of trials:

(a) The charges and specifications should be read and explained to the accused.

(b) The accused should be asked how he pleads to each charge and each specification.

(c) If the accused pleads guilty, his plea must be changed to one of not guilty in any of the following situations:

(1) Where the accused requests that his plea be changed;

(2) Where the accused does not understand the meaning of his plea or the effects;

(3) Where, after evidence is offered, the summary court officer concludes that the plea of guilty was improvident; or,

(4) Where during the proceeding the accused makes a statement which is inconsistent with his plea of guilty.

(d) If a plea of guilty is accepted, the summary court officer may find the accused guilty without calling witnesses or, if justice requires, by calling witnesses and determining the circumstances.

(e) If the accused pleads not guilty or whenever his plea is changed to not guilty, the summary court must receive and consider the evidence.

(f) The procedure for receiving evidence is as follows:

(1) Call prosecution witnesses individually and:

- A. Swear the witness,
- B. Question each witness on all relevant facts to the offense charged and in extenuation or mitigation,
- C. Ask the accused if he wishes to cross-examine the witness, and assist him, if necessary, and
- D. Follow rules of evidence in receiving evidence (For example, written statements of witnesses are not admissible without consent of the accused).

(2) Call defense witnesses individually.

(3) Examine and allow the accused to examine all real and documentary evidence.

(4) Explain to the accused that he may decide whether or not to testify as a witness.

(g) Decide the case, render findings, and announce decision.

(h) If the accused is found guilty,

(1) Show or read to the accused any admissible record of previous convictions and personal data on the first page of the charge sheet.

(2) Ask the accused if the information is correct.

(3) Advise the accused that he has a right to submit matters in extenuation or mitigation, ask him if he wishes to make a sworn or unsworn statement, and consider any such evidence.

(4) Hear other witnesses in extenuation and mitigation.

(5) Ask the accused whether he has anything further to submit.

(i) Determine sentence (See Annex 7 for Table of Maximum Punishments for Summary Courts-Martial). Announce the sentence and complete Items 40-46 of the charge sheet. On page 1 of the charge sheet, cross out the names of any witnesses who did not testify and insert the names and addresses of witnesses who were called if their names were not listed (note whether they testified for the prosecution or the accused).

(j) Forward the original and copies of the charge sheet with related papers, if any, to the convening authority.

SECTION VI. POST-TRIAL ACTIONS

3-27. Reviews. (a) Upon receipt of each record of a court-martial, the convening authority will forward the record to the appropriate staff judge advocate for a written review. Upon receipt of the staff judge advocate's review, the convening authority will take appropriate action.

(b) If the sentence of a special court-martial, as approved by the convening authority, includes a bad conduct discharge, whether or not suspended, the State Judge Advocate will then review the record, in accordance with Section 111b of the MCA.

(c) The records of all general courts-martial will be reviewed by the State Judge Advocate before the convening authority's action, in accordance with Sections 107 and 111 of the MCA.

3-28. Deferral of Sentences to Confinement. All sentences to confinement are deferred until final action on the sentence has been taken by the convening authority and the sentence has been approved in writing by the Adjutant General. A sentence to confinement shall not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made.

3-29. Convening Authority's Action. (a) Upon completion of any review in accordance with paragraph 3-27, the record of trial will be forwarded to the convening authority for his action. The convening authority may:

- (1) Approve all or part of such sentence.
- (2) Suspend all or part of such sentence.
- (3) Defer the execution of all or part of such sentence.
- (4) Disapprove all or part of such sentence.

(b) In the event the convening authority disapproves the findings and sentence of a court-martial, he may order a rehearing, except where there is a lack of evidence of guilt in the record to support the finding. When he disapproves the findings and sentence, he will state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he will dismiss the charges.

(c) If a member is charged, tried, convicted, and sentenced under two or more charges in one trial or separate trials, the convening authority may order the punishment executed consecutively or concurrently as he deems appropriate. "Consecutively" means that one punishment starts after the other has been served. "Concurrently" means that the punishment under both charges would be served at the same time.

(d) Upon ordering the punishment into execution, the convening authority completes that portion of the charge sheet designated "To Be Filled in By Convening Authority."

(e) The convening authority will have the remaining portion of the charge sheet completed by the appropriate officer.

3-30. Publication of Results. Upon completion of his review, the convening authority will publish orders setting forth the findings of the trial. Annex 17 contains a sample "Promulgating Order".

3-31. Disposition of Fines. When a fine is paid, the person receiving the money will cause such money to be paid in accordance with Section 171, MCA. A money order or certified check, payable to the Treasurer of the State of Arkansas, will be forwarded to the State Adjutant General for deposit to the Military Courts-Martial Fund.

3-32. Nonpayment of Fines. When the sentence of a court-martial includes a fine and such fine has not been paid within 10 days after notice to the person so convicted of approval by the convening authority, the convening authority will issue a summons to show cause directed to the sheriff of the county in which the person so convicted is found, directing the sheriff to summon the person so convicted to show cause why he should not be imprisoned for non-payment. The criteria set forth in Ark Stats Ann. 41-1103 shall be used in determining whether cause exists. If the convening authority determines that cause does not exist, the convening authority shall impose imprisonment on the person so convicted until the fine or specified part thereof is paid in accordance with the provisions of Ark Stats Ann. 41-1103.

3-33. Execution of Confinement. Sentences of confinement adjudged by military courts may be executed only in military stockades under the control of the Arkansas National Guard or in civil jails designated in writing for that purpose by the Adjutant General or the State Judge Advocate.

3-34. Distribution and Filing of Charge Sheet. When the convening authority has completed his action, the charge sheets, with copies of all exhibits attached, will be distributed as follows:

(a) Original: Will be the record of trial and will be placed in the unit military personnel record of the accused.

(b) First Copy: Delivered to the accused.

(c) Second Copy: For the convening authority's use.

(d) Third Copy: State Judge Advocate, Office of the Adjutant General.

(e) Fourth Copy: Unit Commander.

CHAPTER 4

GENERAL ADMINISTRATIVE PROCEDURES AND REPORTS

4-1. Legal Process. (a) Civil Damage Suit. Arkansas law provides for defense and some types of immunity in legal proceedings brought against members of the Organized Militia for action occurring in the performance of their military duties. Any member who is served with any type of legal process of any state or federal court will notify the State Judge Advocate and the Adjutant General within twenty-four hours or as soon thereafter as possible. The member will then abide by the instructions received.

(b) Habeas Corpus or other Court Orders. If any state or federal court issues any process regarding any member undergoing punishment under the MCA or any other matter involving the Organized Militia, the person served with such process will notify the State Judge Advocate and the Adjutant General within one hour, or as soon thereafter as possible.

4-2. Forms of Process. The trial counsel, defense counsel, accused, courts-martial and courts of inquiry shall have the opportunity to obtain witnesses and testify, and to compel the production of other evidence pursuant to sections 92 and 95 of the MCA. Sample forms of process are listed in Annexes 14 and 15 of this regulation. Rule 703, Manual for Courts-Martial, United States (1984), is adopted as a procedural guide; however, the MCA will govern in case of conflict.

4-3. Expenses. The expenses of a proceeding which involves a duty assignment authorized by Title 32, U.S.C. may be paid from federal funds. The expenses of a proceeding which involves a duty assignment authorized by the Arkansas Constitution or laws of Arkansas will normally be paid from state funds. A necessary expenditure which for some reason cannot be paid from federal funds will be paid from state funds. Under such directions as the Governor, Adjutant General, or State Judge Advocate may give, the convening authority of a general or special court-martial or of a court of inquiry may detail or employ qualified court reporters, who shall record the proceedings of any testimony taken before the court. Under like regulations, the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

4-4. Government Transportation. Government transportation will not be provided to, or used by, the accused in preparation of his defense in any action brought against the member under the MCA unless authorized by the convening authority.

4-5. Reports Required. The form of records to be maintained of proceedings under the MCA shall be prescribed by directive of the Adjutant General. Such directives shall also prescribe which categories of proceedings shall be in writing.

4-6. Instructions on MCA. Section 165 of the MCA requires that certain sections be explained to every enlisted member at time of his enlistment or transfer into any force of the Organized Militia, or within thirty days thereafter. These provisions should also be explained annually to each unit of the Organized Militia.

#### CHAPTER 5

#### PUNITIVE SECTIONS

5-1. Lesser Included Offenses. The directions and information contained in Article 79 Manual for Courts-Martial, United States (1984) concerning lesser included offenses, is adopted to the extent that it is applicable to the punitive sections of the Military Code of Arkansas (Sections 119-162). Lesser included offenses under the corresponding punitive article in Part IV of Manual for Courts Martial, United States (1984) is adopted as part of this regulation to the extent that the punitive sections of the MCA correspond to punitive articles of the Uniform Code of Military Justice (UCMJ). A lesser included offense may be applicable where such an offense is defined in both the MCA and the UCMJ.

ANNEX INDEX

- ANNEX 1 - Tables of Maximum Nonjudicial Punishment Under Section 59
- ANNEX 2 - Notification of Intent to Impose Nonjudicial Punishment
- ANNEX 3 - Suggested Guide for Conduct of Nonjudicial Punishment Proceedings
- ANNEX 4 - Waiver of Rights Under Section 59 Military Code of Arkansas
- ANNEX 5 - Sample Letter of Transmittal of Nonjudicial Punishment Record and Fine
- ANNEX 6 - Sample Format for Remission, Mitigation, Suspension or Setting Aside of Nonjudicial Punishment
- ANNEX 7 - Tables of Maximum Punishment Under Courts-Martial
- ANNEX 8 - Warnings and Waivers Concerning Summary Court-Martial
- ANNEX 9 - Charge Sheet
- ANNEX 10 - Sample Charges and Specifications
- ANNEX 11 - Sample Letter of Transmittal of Court-Martial Charges
- ANNEX 12 - Warrant (Pre-Trial Confinement)
- ANNEX 13 - Sample Order Detailing Summary Court-Martial
- ANNEX 14 - Sample Letter and Subpoena Duces Tecum
- ANNEX 15 - Sample Letter and Subpoena as Witness
- ANNEX 16 - Sample Notice of Trial Setting
- ANNEX 17 - Sample Promulgating Orders
- ANNEX 18 - Sample Letter of Transmittal of Summary Court-Martial Record and Fine
- ANNEX 19 - Sample Summons to Show Cause for Nonpayment of Fine
- ANNEX 20 - Punitive Section's of MCA
- ANNEX 21 - Rights Waiver Certificate
- ANNEX 22 - Control Sheet for Preliminary Inquiry

TABLE 2

IMPOSED UPON ENLISTED MEMBER BY		
ITEM	TYPE OF PUNISHMENT	COMMANDING OFFICER
1.	Admonition or Reprimand; and/or (Note 1)	Written or Oral
2.	Restriction with or without suspension from duty	Two Weeks
3.	Withholding of Privileges	Two Weeks
4.	Correctional Custody	Not Applicable
5.	Forfeiture of Pay of	\$10
6.	Confinement when attached	Seven days
7.	Reduction	To the next lower grade, if authority to promote to that grade
8.	Extra duties	2 weeks at 2 hrs per day. Need not be consecutive but may include holidays.

ANNEX 1  
AR ARNG Reg 27-4  
AR ANG Reg 110-1

TABLES OF MAXIMUM NONJUDICIAL  
PUNISHMENT UNDER SECTION 59

TABLE 1

ITEM	TYPE OF PUNISHMENT	IMPOSED UPON AN OFFICE BY	
		UNIT COMMANDER	GOVERNOR
1.	Admonition or Reprimand, (Note 1) and/or	Written or Oral	Written or Oral
2.	Restriction with or without suspension from duty, or	Two Weeks	Two Weeks
3.	Withholding of privileges	Two Weeks	Two Weeks
4.	Arrest in quarters, or	Not authorized	Not authorized
5.	Forfeiture of Pay, or	Not authorized	Not more than \$75
6.	Fine	Not authorized	Not more than \$75

NOTE 1. In addition to or in lieu of admonition or reprimand, only one of the other specified punishments may be imposed.

TABLE 2 (CONTINUED)

NOTE 1. Written admonitions or reprimands will be attached to AGARK Form SJA 1 and distributed in accordance with paragraph 2-13.

ANNEX 2  
AR ARNG REG 27-4  
AR ANG REG 110-1

NOTIFICATION OF INTENT TO IMPOSE	CONTROL NO. (If Applicable)	DATE
NONJUDICIAL PUNISHMENT		10 Aug 84
TO: (Name, Grade, SSAN, Orgn, Major Command) SGT John P. Jones, 123-45-6789 Co A, 2nd Bn, 153rd Infantry 39th INFANTRY BRIGADE		
FROM: (Title, Orgn, Including Major Command) Commander Co A, 2nd Bn, 153 Infantry 39th Infantry Brigade		
THRU: (Intermediate Commanders, if any)		
1. PRELIMINARY INVESTIGATION HAS DISCLOSED THAT: Seargeant John P. Jones, Arkansas Army National Guard, did, at Walnut Ridge, AR on or about 8 Aug 81, without authority, fail to go at the time prescribed to his appointed place of duty in violation of the (See block 8) MILITARY CODE OF ARKANSAS, Section 59.		
2. I INTENDED TO PUNISH YOU UNDER SECTION 59 OF THE CODE FOR THE ABOVE OFFENSE(S), UNLESS: A. YOU DEMAND TRIAL BY COURT-MARTIAL: OR B. GIVE ME A SATISFACTORY VERBAL OR WRITTEN EVIDENCE THAT YOU DID NOT COMMIT THE OFFENSE(S) OR GIVE ME A SATISFACTORY EXPLANATION WHICH SHOWS THAT SHOULD NOT BE PUNISHED.		
3. IN DECIDING WHETHER TO ACCEPT PUNISHMENT, YOU SHOULD REALIZE THAT THIS IS A SERIOUS MATTER ALTHOUGH NONJUDICIAL PUNISHMENT WILL NOT GIVE YOU A RECORD OF A COURT CONVICTION, IT WILL REMAIN IN YOUR PERMANENT MILITARY RECORDS. IT MAY AFFECT YOUR FUTURE CHANCES FOR FAVORABLE TRAINING OPPORTUNITIES, ASSIGNMENTS, PROMOTIONS AND SO FORTH. ALSO, YOU SHOULD UNDERSTAND THAT ACCEPTING NONJUDICIAL PUNISHMENT DOES NOT AMOUNT TO PLEADING GUILTY - YOU HAVE THE RIGHT TO PRESENT MATTERS IN YOUR DEFENSE.		
4. YOU DO NOT HAVE TO GIVE ANY INFORMATION OR SAY ANYTHING ABOUT THE OFFENSE(S) DESCRIBED ABOVE. IF YOU DO, IT MAY BE USED AGAINST YOU EITHER IN THIS ACTION OR IN A TRIAL BY COURT-MARTIAL.		
5. IF YOU REQUEST IT, MILITARY COUNSEL WILL BE MADE AVAILABLE, FREE OF CHARGE, TO HELP YOU DECIDE WHETHER YOU SHOULD ACCEPT NONJUDICIAL PUNISHMENT OR DEMAND A COURT-MARTIAL AND WHAT YOU SHOULD DO ABOUT PRESENTING MATTERS IN DEFENSE. YOU SHOULD TAKE ADVANTAGE OF YOUR RIGHT TO COUNSEL IF YOU HAVE ANY QUESTIONS OR WANT ANY HELP. IF YOU NEED ASSISTANCE IN OBTAINING COUNSEL, CONTACT: The Office of the Staff Judge Advocate at State Headquarters.		
6. IF YOU ELECT OR ACCEPT PUNISHMENT, YOU ARE ENTITLED TO MAKE A FULL PRESENTATION IN DEFENSE, MITIGATION, OR EXTENUATION, BEFORE ME, IN WRITING OR IN PERSON OR BOTH. IF YOU DESIRE TO MAKE AN ORAL PRESENTATION, (a) YOU MAY CALL WITNESS(ES) WHO ARE AVAILABLE LOCALLY AND CAN BE PRESENT WITHOUT LEGAL PROCESS (THAT IS WITHOUT SUBPOENA OR PAYMENT OF WITNESS FEES); (b) YOU MAY PRESENT EVIDENCE; AND (c) YOU MAY BE ACCOMPANIED BY A PERSON TO SPEAK ON IF YOU MAKE A PRESENTATION, WRITTEN OR ORAL, THE FINAL DECISION AS TO WHETHER TO IMPOSE PUNISHMENT AND, IF SO, THE PUNISHMENT TO BE IMPOSED WILL BE DECIDED ONLY AFTER CONSIDERING WHAT YOU PRESENT.		
7. YOU MUST REPLY TO THIS NOTIFICATION, FILL IN THE INDORSEMENT ON PAGE 2, attach any documents which you may desire to be considered, and return this notification within 3 CALENDAR DAYS OF THE DATE YOU RECEIVE IT. IF YOU NEED MORE TIME, YOU MUST IMMEDIATELY REQUEST IT IN WRITING WITH YOUR REASONS.		
8. ADDITIONAL INFORMATION (If any) Block #1 Cont'd: To wit: The National Guard Armory at Walnut Ridge, AR TYPED NAME, GRADE AND TITLE OF OFFICER ATTACHMENTS (If applicable) INTENDING TO IMPOSE PUNISHMENT JAMES JOHNSON, CPT, IN, ARNG COMMANDING SIGNATURE		

INDORSEMENT NO. 1 BY INDIVIDUAL CONCERNED DATE: 12 August 1981

TO: (Title, Orgn. of Officer Sending Notification)

Commander: Co A, 2nd Bn, 153rd Inf  
39th Infantry Brigade

(THRU)

FROM: (Name, Grade, and Orgn.)

SGT John P. Jones  
Co A, 2nd Bn, 153rd Infantry

9. I RECEIVED THIS NOTIFICATION ON 12 August 1981

10. I UNDERSTAND THAT MILITARY COUNSEL IS AVAILABLE TO ME FREE OF CHARGE AND I  HAVE  HAVE NOT CONSULTED COUNSEL. ALSO, I UNDERSTAND I MAY HAVE CIVILIAN COUNSEL AT MY OWN EXPENSE.

11. (Check applicable box)

- I ACCEPT NONJUDICIAL PUNISHMENT.  
 I REFUSE NONJUDICIAL PUNISHMENT AND DEMAND TRIAL BY COURT MARTIAL.

12. (Check applicable box)

- I DESIRE TO MAKE AN ORAL PRESENTATION BEFORE YOU.  
 I DO NOT DESIRE TO MAKE AN ORAL PRESENTATION BEFORE YOU.

13. I UNDERSTAND THAT I MAY MAKE A WRITTEN PRESENTATION, INCLUDING EVIDENCE THAT I DID NOT COMMIT THE OFFENSE(S), INFORMATION WHICH MAY PROVIDE A REASON FOR NOT IMPOSING PUNISHMENT, AND MATTERS WHICH WILL HELP YOU TO DECIDE WHAT MY PUNISHMENT SHOULD BE, IF ANY.

(Check applicable box)

- I DO NOT DESIRE TO MAKE A WRITTEN PRESENTATION.  
 I HAVE ATTACHED MY WRITTEN PRESENTATION.  
MY WRITTEN PRESENTATION FOLLOWS: (Continue on additional page if necessary)

TYPE OR PRINT NAME, GRADE AND SSAN OF  
INDIVIDUAL CONCERNED

John P. Jones, SGT, 123-45-6789

ATTACHMENTS (If Applicable)

SIGNATURE

(Use this space for intermediate return indorsements, if any)

IMPOSITION OF NONJUDICIAL PUNISHMENT		DATE: 13 Aug 81
TO: (Name, Grade, SSAN, Orgn, Major Command SGT John P. Jones, 123-45-6789 Co A, 2nd Bn, 153rd Infantry		
FROM: (Title, Orgn, including Major Command Commander Co. A, 2nd Bn, 153rd Infantry		
1. YOU DID NOT DEMAND TRIAL BY COURT-MARTIAL AND I IMPOSE THE FOLLOWING PUNISHMENT:  A FINE OF \$10		
2. YOU HAVE THE RIGHT TO APPEAL THIS PUNISHMENT WITHIN 15 DAYS THROUGH CHANNELS TO THE:  Battalion Commander at 1234 Hometown Road, Batesville AR 72801		
TYPED NAME, AND GRADE OF OFFICER IMPOSING PUNISHMENT JAMES JOENSON, CPT, IN, ARNG Commanding		ATTACHMENT (If applicable)
SIGNATURE		
INDORSEMENT BY INDIVIDUAL CONCERNED		
TO: (TITLE, ORGN OF OFFICER SENDING NOTIFICATION) Commander Co A, 2nd Bn, 153rd Infantry		
FROM: (NAME GRADE, AND ORGN) SGT John P. Jones Co A, 2nd Bn, 153rd Infantry		
1. I RECEIVED THIS NOTIFICATION ON <u>14 August 1981</u>		
2. I DO NOT APPEAL.		
3. I DO APPEAL AND SUBMIT THE FOLLOWING MATTERS IN DEFENSE, EXTENUATION OR MITIGATION:		
TYPE OR PRINT NAME, GRADE AND SSAN OF INDIVIDUAL CONCERNED JOHN P. JONES, E-5, 123-45-6789		ATTACHMENTS (If applicable)
SIGNATURE		

AGARD Form SJA-1

SUGGESTED GUIDE FOR CONDUCT OF NONJUDICIAL  
PUNISHMENT PROCEEDINGS

I. NOTIFICATION:

CO: I AM \_\_\_\_\_, COMMANDER OF (Name of Unit Organization)  
AS A COMMANDER, I HAVE DISCIPLINARY POWERS UNDER SECTION 59 OF THE  
MILITARY CODE OF ARKANSAS AND I AM CONSIDERING PUNISHING YOU UNDER  
SECTION 59. PUNISHMENT UNDER SECTION 59 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 FORM. I NOW HAND YOU A COPY OF THIS  
FORM. PLEASE READ ITEMS 1 THROUGH 8. YOU WILL SEE AS YOU READ THE  
FORM, ITEM 1 STATES THE OFFENSE(S) YOU ARE REPORTED TO HAVE COMMITTED  
AND ITEMS 2 THROUGH 8 LIST THE RIGHTS YOU HAVE IN THESE PROCEEDINGS.  
YOU ARE SPECIFICALLY ADVISED THAT, UNDER THE PROVISIONS OF SECTION 59,  
MILITARY CODE OF ARKANSAS, YOU ARE NOT REQUIRED TO MAKE ANY STATEMENT  
OR PROVIDE ANY INFORMATION CONCERNING THE ALLEGED OFFENSE(S), BUT THAT  
IF YOU DO, IT CAN AND MAY BE USED AGAINST YOU IN THESE SECTION 59  
PROCEEDINGS OR IN A TRIAL BY COURT-MARTIAL. AS THE FORM WHICH YOU HAVE  
BEEN GIVEN PROVIDES, YOU HAVE THE RIGHT TO CONSULT WITH MILITARY COUNSEL,  
BUT MAY WAIVE IT.

1. NOTE TO CO:

Wait for the member to read items 1 through 8. Allow him to retain the  
form 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 TO CO:

If the member does not understand the offense(s), explain the offense(s)  
to him. First, tell him what Section(s) of the Code he is reported to  
have violated. Then explain the elements of the offenses to him.  
Part IV of the Manual for Courts-Martial, U.S. (1984), lists the  
elements of the various offenses.

CO: DO YOU UNDERSTAND ITEMS 2 THROUGH 8? DO YOU HAVE ANY QUESTIONS ABOUT  
YOUR RIGHTS IN THESE PROCEEDINGS?

D: (YES) (NO)

3. NOTE TO CO:

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

- a. Section 59, Military Code of Arkansas
- b. Part V, of the Manual for Courts-Martial, U.S., (1984)
- c. Pertinent regulations

If you cannot find the answer in one of these sources, you should contact your JAG office.

CO: THERE ARE SEVERAL 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 HAVE TO DECIDE WHETHER TO START COURT-MARTIAL PROCEEDINGS AGAINST YOU. SO YOU MUST FIRST DECIDE WHETHER YOU WILL CONSENT TO THESE SECTION 59 PROCEEDINGS OR DEMAND COURT-MARTIAL. IF YOU CONSENT TO THESE SECTION 59 PROCEEDINGS, YOU MUST THEN 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 PERSONAL REPRESENTATIVE 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. EVIDENCE IN DEFENSE WOULD BE FACTS SHOWING THAT YOU DID NOT COMMIT THE OFFENSE(S) STATED IN ITEM 1. EVEN IF YOU CANNOT PRESENT ANY EVIDENCE IN DEFENSE, YOU CAN 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 SERVICE MEMBER AND THAT YOU DESERVE CONSIDERATION. 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 PERSONAL REPRESENTATIVE TO ASSIST YOU IN ACCOMPLISHING WHAT I HAVE JUST MENTIONED. DO YOU UNDERSTAND THE DECISIONS YOU HAVE TO MAKE?

D: (YES) (NO)

CO: I WANT TO EMPHASIZE THAT IF YOU CONSENT TO THESE PROCEEDINGS AND IF AFTER YOU HAVE PRESENTED YOUR EVIDENCE, I AM CONVINCED THAT YOU ARE GUILTY, THE MAXIMUM PUNISHMENTS IN THESE PROCEEDINGS WOULD BE \_\_\_\_\_

4. NOTE TO CO:

Annex 1 of this manual contains the maximum punishments.

CO: 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:

- a. Annex 7 of this Manual lists the maximum punishments a court-martial may impose for violations of the various Sections of the Military Code of Arkansas.
- b. Even if the member requests, you do not have to, and should not yet, inform him of the particular punishments you may be considering.

CO: AS ITEM 5 AND 6 POINTED OUT, YOU HAVE THE RIGHT TO TALK TO MILITARY COUNSEL OR CIVILIAN LAWYER, AT YOUR OWN EXPENSE, BEFORE YOU MAKE YOUR DECISIONS. WOULD YOU LIKE TO CONSULT WITH COUNSEL BEFORE YOU MAKE YOUR DECISIONS?

D: (YES) (NO)

6. NOTE TO CO:

If the member desires to talk to a military counselor or to an attorney, recess the proceedings. Tell the member when you intend to resume the proceedings. As a general rule, he should be encouraged to consult with the counselor or the attorney promptly. When you resume the proceedings, begin at Item 7 of the form.

CO: YOU NOW HAVE 3 CALENDAR DAYS TO THINK ABOUT WHAT YOU SHOULD DO IN THIS CASE. YOU MAY ADVISE ME OF YOUR DECISION AT ANY TIME WITHIN THE 3 CALENDAR DAY PERIOD.

7. NOTE TO CO:

At this point, the proceedings should be recessed unless the member affirmatively indicates that he is ready to announce his decision at this time. If the member waives his right to 3 days to respond, have him execute waiver (Annex 4 and attach one copy to each form). When he announces his 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 CHECK THE APPROPRIATE BOX IN ITEM 11 AND SIGN THE FORM IN THE BLOCK FOR SIGNATURE IN LOWER LEFT HAND CORNER OF FORM.

9. NOTE TO CO:

Wait until the member checks the blank and signs the form to .

CO: 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: PLEASE CHECK THE APPROPRIATE BOX IN ITEM 11. NOW THAT YOU HAVE TOLD ME WHAT YOUR FIRST DECISION IS, I WOULD LIKE TO KNOW WHAT YOUR OTHER DECISIONS ARE. DO YOU WANT TO SUBMIT ANY EVIDENCE SHOWING THAT YOU DID NOT COMMIT THE OFFENSE(S), OR CONCERNING 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)

11. NOTE TO CO:

If member waives right to counsel have him execute waiver (Annex 4) and attach one copy to each form.

CO: NOW CHECK THE BOXES IN ITEMS 12 AND 13 AND SIGN THE FORM IN THE SIGNATURE BLOCK IN THE LOWER LEFT HAND CORNER OF THE FORM.

12. NOTE TO CO:

- a. Wait until the member checks the boxes and signs 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 member 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 member, stop the proceedings. If you are still convinced that the member is guilty and deserves to be punished, you may proceed to impose punishment.
- c. If the member needs additional time to gather his evidence or obtain a personal representative, proceed as follows. Give the member a reasonable period of time to gather his evidence or to obtain a representative. Tell the member when you intend to resume the proceedings. When you resume the proceedings consider the member's evidence. If the evidence persuades you that you should not punish the member, stop the proceedings and inform the member of your decision. If you are still convinced that the member is guilty and deserves to be punished, you may proceed to impose punishment.

II. IMPOSITION OF PUNISHMENT:

13. NOTE TO CO:

As soon as you decide to impose punishment, complete items 1 and 2 on page 3 of the form and sign in the appropriate signature block. Then have the member report to you and proceed as follows:

CO: I TOLD YOU THAT I WAS CONSIDERING PUNISHING YOU FOR THE OFFENSE(S) SHOWN ON THE FORM UNLESS YOU DEMANDED COURT-MARTIAL. YOU DECIDED TO CONTINUE THESE SECTION 59 PROCEEDINGS RATHER THAN DEMANDING COURT-MARTIAL. 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 CONVINCED THAT YOU COMMITTED THE OFFENSE(S) STATED IN ITEM 1. FOR THAT REASON, I HEREBY IMPOSE THE FOLLOWING PUNISHMENTS UPON YOU:

---

III. APPELLATE ADVICE:

CO: YOU HAVE A RIGHT TO APPEAL THESE PUNISHMENTS THROUGH CHANNELS TO (THE NEXT SUPERIOR COMMANDER). YOU CAN APPEAL BECAUSE YOU THINK THAT IN THESE PROCEEDINGS, I IMPROPERLY DENIED YOU ONE OF YOUR RIGHTS OR BECAUSE YOU THINK THAT THE PUNISHMENTS I HAVE IMPOSED ARE TOO SEVERE. YOU WILL BE PROVIDED WITH ANY ASSISTANCE YOU NEED TO PREPARE YOUR APPEAL. IF YOU WANT TO APPEAL, YOU SHOULD SUBMIT YOUR APPEAL WITHIN 15 CALENDAR DAYS FROM TODAY. IF YOU NEED ADDITIONAL TIME TO COMPLETE PREPARATION OF YOUR APPEAL, YOU SHOULD ADVISE ME. IF YOU APPEAL TO (THE NEXT SUPERIOR COMMANDER), HE CAN TAKE SEVERAL TYPES OF ACTION ON YOUR APPEAL: HE CAN SIMPLY DENY YOUR APPEAL AND APPROVE THE PUNISHMENTS; HE CAN SUSPEND THE PUNISHMENTS I HAVE IMPOSED; HE CAN REDUCE THE QUANTITY OF THE PUNISHMENTS; OR HE CAN COMPLETELY CANCEL THE PUNISHMENTS. 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 no, continue as follows:

CO: IF YOU DO NOT WANT TO APPEAL, PLEASE CHECK THE PROPER BOX IN THE ITEM 2 PAGE 3 AND SIGN IN THE SIGNATURE BLOCK IN THE LOWER LEFT HAND CORNER OF THE FORM.

15. NOTE TO CO:

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

CO: YOU ARE FREE TO GO NOW.

16. NOTE TO CO:

If the accused appeals any punishment, you must defer the punishment's execution during the appeal.

CO: DO YOU WANT TO SUBMIT ANY EVIDENCE FOR (THE NEXT SUPERIOR COMMANDER)  
TO CONSIDER DURING THE APPEAL?

D: (YES) (NO)

17. NOTE TO CO:

If the answer is yes, continue as follows:

CO: PLEASE CHECK THE APPROPRIATE BOX IN ITEM 3 AND SIGN IN THE SIGNATURE  
BLOCK IN THE LOWER LEFT HAND CORNER OF THE FORM.

WHEN YOU FURNISH THIS EVIDENCE TO ME, I WILL SEND THE FORM AND YOUR  
EVIDENCE TO THE PROPER AUTHORITY. I WILL NOTIFY YOU AS SOON AS I LEARN  
WHAT ACTION HAS BEEN TAKEN ON YOUR APPEAL. YOU ARE FREE TO GO NOW.

ANNEX 4  
AR ARNG REG 27-4  
AR ANG REG 110-1

WAIVER OF RIGHTS UNDER SECTION 59  
MILITARY CODE OF ARKANSAS

1. Right to counsel. I have been advised that before accepting this Section 59 Proceeding I have a legal right to consult with military counsel, who shall be a commissioned officer, at no expense or to consult with civilian counsel at my expense. I here by \_\_\_\_\_ my legal (waive) (do not waive) right to military counsel. I heraby \_\_\_\_\_ my legal right (waive) (do not waive) to civilian counsel of my own choosing and at my own expense.

2. Right to Reply to Notification of Intent to Impose Punishment. I have been advised that I have 3 calendar days, unless extended by written authority of my commander, to reply to the notification of intent to impose punishment under this section. I hereby \_\_\_\_\_ my legal right to 3 (waive) (do not waive) calendar days for replying to the notification of intent to impose punishment.

\*Accused must write his response above the line in each of the above statements.

\_\_\_\_\_  
SIGNATURE OF SERVICE MEMBER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Witness

ANNEX 5  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE LETTER OF TRANSMITTAL OF NONJUDICIAL  
PUNISHMENT RECORD AND FINE

HHC 1ST BATTALION 153D INFANTRY  
Arkansas Army National Guard  
Post Office Box 99  
Malvern, Arkansas 72905

\_\_\_\_\_  
DATE

SUBJECT: Transmittal of Nonjudicial Punishment Record and Fine

TO:

1. Attached is Nonjudicial Punishment Record in the case of \_\_\_\_\_  
\_\_\_\_\_ of this unit. It is understood that this Record will  
be transmitted to DPA, The Adjutant General, Arkansas.
2. Enclosed herewith is (check) (money order) in the amount of \$ \_\_\_\_\_  
in payment of the fine(s) assessed in this case. It is understood that this  
money will be transmitted through DPA to State Purchasing - Contracting (PPC).

JOHN A. DOE  
CPT, IN, ARNG  
Commanding

I hereby acknowledge receipt of the record and money specified above, and  
certify that I have made the proper entries:

SIGNATURE: \_\_\_\_\_

NAME TYPED: \_\_\_\_\_

RANK & ORGN: \_\_\_\_\_

SAMPLE FORMAT FOR REMISSION, MITIGATION, SUSPENSION OR  
SETTING ASIDE OF NONJUDICIAL PUNISHMENT

\_\_\_\_\_ Indorsement to AGARK Form SJA 1, Date \_\_\_\_\_  
UNIT HEADING

TO:

1. On \_\_\_\_\_ (I) (my predecessor in command) (the  
Commander, \_\_\_\_\_) (\_\_\_\_\_) imposed  
Nonjudicial punishment on you, consisting of \_\_\_\_\_. (No part of  
the punishment) (the portion of the punishment relating to \_\_\_\_\_)  
(\_\_\_\_\_) was suspended. (You have requested action to be taken  
to (remit the punishment) (\_\_\_\_\_)).

2. I hereby remit (the punishment) (the unserved portion of the punishment)  
(the portion of the punishment relating to \_\_\_\_\_) effective  
(Immediately) (\_\_\_\_\_, 198 \_\_\_\_).

or

2. I hereby mitigate (the punishment) (so much of the punishment as relates  
to \_\_\_\_\_) (the unserved portion of the punishment relating  
to \_\_\_\_\_) to (forfeiture of \$10.00).

or

2. I hereby suspend (the punishment) (the unserved portion of the punishment)  
(the portion of the punishment relating to \_\_\_\_\_) (\_\_\_\_\_)  
until \_\_\_\_\_, 198 \_\_\_\_, at which time, unless the suspension is  
sooner vacated, it will be remitted.)

or

2. I hereby set aside (the punishment) (the unserved portion of the punishment)  
(the unserved portion of the punishment relating to \_\_\_\_\_) (\_\_\_\_\_)  
(\_\_\_\_\_). (All rights, privileges, and property of which you have been  
deprived by the (portion of the) sentence set aside will be restored.

\_\_\_\_\_  
SIGNATURE BLOCK

NOTES:

1. Insert "Suspension", "Mitigation", or "Setting Aside", as appropriate.
2. Use THRU address to send through intermediate channels, if applicable.
3. If the action taken results in eliminating or suspending a reduction which was previously effected a paragraph in substantially the following form should be added:

(3. Your date of rank as  
( \_\_\_\_\_ ) is ( \_\_\_\_\_ )

SAMPLE FORMAT FOR REVOCATION OF  
REMISSION, MITIGATION, SUSPENSION OF  
NONJUCICIAL PUNISHMENT \*\*

Remission, Mitigation, Suspension

UNIT HEADING

SUBJECT: Revocation of \_\_\_\_\_ of Nonjudicial Punishment

TO: \_\_\_\_\_ (Individual)

1. On \_\_\_\_\_ (I) (my predecessor in command) (the Commander, \_\_\_\_\_) imposed nonjudicial punishment on you, consisting of \_\_\_\_\_. The portion of the punishment relating to \_\_\_\_\_ was suspended.

2. I hereby revoke the portion of the punishment as suspended effective immediately.

\_\_\_\_\_  
SIGNATURE BLOCK

\*\* NOTE: A hearing should be conducted before revocation

TABLES OF MAXIMUM PUNISHMENT UNDER  
COURTS-MARTIAL

TABLE 1                      SUMMARY COURT-MARTIAL                      SECTION 64, MCA

ITEM	MAXIMUM PUNISHMENT	OFFICER	ENLISTED
1.	Fine of not more than \$25	NO	YES
2.	Confinement with hard labor, not exceeding twenty-five days	NO	YES
3.	Forfeiture of Pay and Allowances, not exceeding \$25	NO	YES
4.	Reprimand	NO	YES
5.	Reduction of Enlisted members to a lower grade	NO	YES

NOTE: Any combination of any two or more of the above punishments may be imposed.

TABLE 2 SPECIAL COURT-MARTIAL SECTION 63 MCA

ITEM	MAXIMUM PUNISHMENT	OFFICER	ENLISTED
1.	Fine of not more than \$100	YES	YES
2.	Confinement with hard labor, not exceeding one hundred days	YES	YES
3.	Forfeiture of pay and allowances not exceeding \$100	YES	YES
4.	Bad Conduct Discharge (NOTE 2)	YES	YES
5.	Reduction of NCO's, Specialist and any EM to any inferior grade.	N/A	YES
6.	Reprimand.	YES	YES

NOTE 1: Any combination of any two or more of the above punishments may be imposed.

NOTE 2: A Bad Conduct Discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

TABLE 3

## GENERAL COURT-MARTIAL, SECTION 62, MCA

ITEM	MAXIMUM PUNISHMENT	OFFICER	ENLISTED
1.	Fine of not more than \$200	YES	YES
2.	Confinement with hard labor, not exceeding two hundred days;	YES	YES
3.	Forfeiture of pay and allowances, not exceeding \$200,	YES	YES
4.	Dishonorable Discharge	YES	YES
5.	Bad Conduct Discharge	YES	YES
6.	Dismissal	YES	YES
7.	Reduction of enlisted members to a lower grade	N/A	YES
8.	Reprimand	YES	YES

NOTE 1: Any combination of any two or more of the above punishments may be imposed.

NOTE 2: General courts-martial shall not be convened unless a complete verbatim account of the proceedings and testimony before the court is made.

WARNINGS AND WAIVERS  
CONCERNING SUMMARY COURT-MARTIAL

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M., \* \_\_\_\_\_  
personally appeared before me at \_\_\_\_\_, \_\_\_\_\_ County, Arkansas,  
at which time and place I instructed him on the information and his rights  
as required under the Military Code of Arkansas. He was instructed and advised.

1. Of each charge and specification that have been filed against him.
2. Of the name of the individuals who filed such charges.
3. That he is not required to make any written or oral statement, and that no person may compel the accused to incriminate himself or to answer any questions, the answer to which may tend to incriminate him.
4. That if he does make any statement, it CAN and MAY be used in evidence against him, and that he does not have to make any statement regarding the offense of which he is accused or suspected.
5. That if he desires to answer any questions, he has the right to cease answering such questions at any time.
6. That he has the right to employ civilian counsel of his choosing and at his own expense.
7. That he has the right to have military counsel detailed to represent him at no expense to him, if he so desires.
8. That he has the right to consult counsel and have his counsel present during any interview.
9. Of the right to cross-examine the witness(es) or have the court ask any questions which the accused desires answered concerning the charges brought against him.
10. Of the right to call any witness(es) or produce any evidence on his own behalf and that the court will assist him in every possible way to do so.
11. Of the right to testify or remain silent before the Court.
12. That after any finding(s) of guilt are announced, he has the right to make an unsworn statement in mitigation and/or extenuation.
13. Of the maximum punishment that can be imposed by the summary court-martial, (25 days confinement, Fine of not more than \$25.00, Forfeiture of pay and allowances of not more than \$25.00, Reprimand, Reduction of enlisted persons to lower grade, and any combination of those punishments - Section 66 MCA)
14. That he has the right to object to trial by summary court-martial, in which event trial may be ordered by special or general court-martial, as may be appropriate.

\_\_\_\_\_  
Typed Name and Grade of Officer  
and Signature

I acknowledge that I received the above warnings.

\_\_\_\_\_  
Signature of Accused

Summary Court Martial No. \_\_\_\_\_

Date \_\_\_\_\_

W A I V E R

1. I (waive) (do not waive) my right to be represented by military counsel upon the charges now pending against me.
  
2. I (waive) (do not waive) my right to be represented by civilian counsel upon the charges now pending against me.
  
3. I (consent) (object) to trial by summary court-martial.

\*Accused must write his response above the line in each of the above statements.

\_\_\_\_\_  
Signature of Accused

\_\_\_\_\_  
Signature of Witness

1. PLACE			2. DATE							
<b>CHARGE SHEET</b>										
3. ACCUSED (Last Name, First Name, Middle Initial)		4. SOCIAL SEC. Account Number	5. PAY GRADE GRADE or RANK							
6. ORGANIZATION AND ARMED FORCE		7. DATE OF BIRTH	9. PAY PER Inactive By Trg Period							
		8. ADDRESS								
10. INITIAL DATE OF CURRENT SERVICE			11. TERM OF CURRENT SERVICE							
12. PRIOR SERVICE:		As to each prior period of service, give inclusive dates of service and Armed Force.								
<table border="1"> <tr> <th>YEARS</th> <th>MONTHS</th> <th>DAYS</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>		YEARS	MONTHS	DAYS						
YEARS	MONTHS	DAYS								
DATA AS TO WITNESSES (Summary Court Officer will line out and insert names as applicable and initial changes)										
13. NAME OF WITNESS		14. ADDRESS (include ZIP Code)		15. WITNESS FOR						
				Prosecution Accused						
DOCUMENTS AND OBJECTS										
16. LIST AND DESCRIBE (If not attached to charges, note where it may be found)										
DATA AS TO RESTRAINT										
17. NATURE OF ANY RESTRAINT OF ACCUSED		18. DATE	19. LOCATION							

20. CHARGE \_\_\_\_\_ VIOLATION OF THE MILITARY CODE OF ARKANSAS  
Specification SECTION \_\_\_\_\_

21. NAME, GRADE, AND ORGANIZATION OF ACCUSER

22. SIGNATURE

AFFIDAVIT

23. 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 MCA 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.

TYPED NAME

24.

DATE

I have this date informed the accused of the charges against him.

NAME, GRADE, AND ORGANIZATION OF IMMEDIATE COMMANDER

SIGNATURE

25.

DESIGNATION OF COMMANDING OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION

PLACE

DATE

The sworn charges were received at \_\_\_\_\_ Hours, this date

FOR THE \_\_\_\_\_

NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING

SIGNATURE

1ST INDORSEMENT

26.

DESIGNATION OF COMMAND OF CONVENING AUTHORITY

PLACE

DATE

Referred for trial to the \_\_\_\_\_ court-martial appointed by

\_\_\_\_\_ 19 \_\_\_\_, subject to the following instructions:

BY \_\_\_\_\_ of \_\_\_\_\_  
COMMANDER OR ORDER

NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING

SIGNATURE

27. 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

28. THE ACCUSED HAS BEEN OFFERED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER SECTION 59 AS TO			
THE ACCUSED HAS NOT BEEN OFFERED PUNISHMENT UNDER SECTION 59 AS TO			
29. NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING SECTION 59 JURISDICTION		30. SIGNATURE	
RECORD OF TRIAL BY SUMMARY COURT-MARTIAL		31. CASE NUMBER	
TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE			
32. WAS THE ACCUSED ADVISED IN ACCORDANCE WITH SECTION 77, MCA YES NO			
(To be filled in by Summary Court)			
33. CONSENT OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL (To be filled in by the accused)		34. SIGNATURE OF ACCUSED	
35. THE ACCUSED, HAVING REFUSED TO CONSENT IN WRITING TO TRIAL BY SUMMARY COURT-MARTIAL, THE CHARGES ARE HEREWITH RETURNED TO THE CONVENING AUTHORITY. CHECK, IF APPLICABLE			
36. NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER		37. SIGNATURE	
38. SPECIFICATIONS AND CHARGES	39. PLEAS	40. FINDINGS	41. SENTENCE OR REMARKS
			42. NUMBER OF PREVIOUS CONVICTIONS CONSIDERED
43. PLACE AND DATE OF TRIAL			44. DATE SENTENCE ADJUDGED
45. NAME, GRADE, ORGANIZATION, AND ARMED FORCE OF SUMMARY COURT OFFICER		46. SIGNATURE	
TO BE FILLED IN BY CONVENING AUTHORITY			
47. ORGANIZATION	48. PLACE	49. DATE	
50. ACTION BY CONVENING AUTHORITY			
51. NAME, GRADE, AND ORGANIZATION OF CONVENING AUTHORITY			52. SIGNATURE
53. ENTERED ON APPROPRIATE PERSONNEL RECORDS IN CASE OF CONVICTION A COPY OF THE RECORD OF TRIAL AND ACTION OF THE CONVENING AUTHORITY HAS BEEN FURNISHED TO THE ACCUSED YES <input type="checkbox"/> NO <input type="checkbox"/> IF NO, STATE REASON			
NAME, GRADE AND DESIGNATION OF OFFICER RESPONSIBLE FOR ACCUSED'S RECORDS		54. SIGNATURE	

SAMPLE AGARK Form SJA-2

- Item 1. Enter geographical location of unit at the time the form is prepared.
- Item 2. Enter date that the form is prepared.
- Item 3. Enter last name, first name, and middle initial.  
Example: Banks, Robert M.
- Item 4. Enter Social Security Account Number. Example: 183-28-9068.
- Item 5. Enter grade of officer or rank of enlisted member, as appropriate, in the space provided. Enter numerical pay grade designation in the space provided. Example: E-4; E-1; E-9.
- Item 6. Enter complete military address of unit to which the individual is assigned. Example: Co A Admin, 39th Support Battalion, Ricks Armory Little Rock Arkansas 72205
- Item 7. Enter the date of birth of the accused. Example: 10 February 1938.
- Item 8. Enter the last known address and county of residence of the accused. Include ZIP code.
- Item 9. Enter amount of Base Pay for one inactive duty training period.
- Item 10. Enter date of the current enlistment or reenlistment of the accused. Example: 15 February 1981.
- Item 11. Enter term of current enlistment as obtained from the latest DD Form 4. Example: One year, no months, no days: 4 years, 6 months, 22 days.
- Item 12. Enter total years, months and days as obtained from Item 40 and 43, DD Form 4. List each period of prior service, inclusive dates of such service, and armed force as obtained from Item 49, DD Form 4.
- Item 13. List the full name of each witness. If there are no witnesses, so state.
- Item 14. Enter the complete address including ZIP code of each witness.
- Item 15. Enter an "X" in the appropriate column, to indicate whether the person is a witness for the prosecution or accused.
- Item 16. List all documents and objects expected to be used as evidence. DO NOT attach originals of documentary evidence. Provide information on the exact location of each piece of evidence. If no documents and/or objects are to be used as evidence, then enter NONE.
- Item 17. Enter type of restraint imposed upon the accused at the time the form is prepared. Example: Restriction; Arrest in Quarters; Confinement. If no restraint is imposed, enter NONE.
- Item 18. Enter the date of restraint as shown in Item 17 was imposed. If no restraint is imposed, enter N/A.

- Item 19. Enter exact location of restraint as shown in item 17. If no restraint is imposed, enter N/A.
- Item 20. Each violation of a different section of the MCA requires a separate charge. Charges, if more than one, are numbered by Roman numerals. Example: I; II; III; IV; etc. If only one charge is made, it need not be numbered. In the blank space following word section, enter the appropriate section of MCA Example: \_\_\_\_\_
- Each specification under a charge is numbered with Arabic numbers. Example: 1; 2; 3; 4; etc. If only one specification is shown under a charge, it need not be numbered. Do not use abbreviations or SSAN of the accused in any specification. Specifications will be free from any typographical error. See Annex II for sample specifications and see also Appendix 6a, MCM, U.S. (1969) for other "Do's and Don'ts" for drafting specifications. Appendix 6c, MCM, U.S. (1969), contains sample specifications for each offense punishable.
- Item 21. Enter name, grade and organization of accuser. Example: John C. Albert, Jr, Captain, Co A, 39 Spt Bn, 39 Inf Bde (Sep), Little Rock, Arkansas 72204, NOTE: Any person subject to the MCA I may be an accuser; however, it is customary for the commander of the accused to be the accuser.
- Item 22. Accuser named in Item 21 signs in this block. Signing for the accuser is not authorized. Rubber stamp signatures are not authorized
- Item 23. Enter appropriate information in blank spaces provided. The accuser MUST take this oath in ALL cases. See Section 3-13(a) of this regulation for those persons authorized to administer oaths.
- Item 24. Enter date accused was notified of the charges. Enter name, grade, and organization of person informing accused of the charges. Person informing accused signs on appropriate line. Person informing accused will also complete requirements contained in Annex 9 hereof.
- Item 25. Enter required information in this block. This block should be completed IMMEDIATELY.
- Item 26. Enter designation of command, place and date. Example: Headquarters, 39 Inf Bde, Arkansas Army National Guard, Ricks Armory, Little Rock, Arkansas, 14 June 1981. Next, enter orders date, Example: Court-Martial Convening Order Number 6, Headquarters, 39 Inf Bde, Arkansas Army National Guard, Ricks Armory, Little Rock, Arkansas. Next enter date of this order. Example: 4 June 1981. If the orders contain any special instructions, enter them next. If none, so state. If a person other than the commander signs this block, enter words "Order" and "Commander" in appropriate blank spaces.
- Item 27. Enter date that a copy of AGARK Form SJAG 2 is served on the accused. NOTE: This item is not required to be completed in a Summary Court-Martial.
- Item 28. Enter "X" in proper box and enter in blank space the numbers of pertinent charges and specifications or "all specifications and charges" as may be appropriate.
- Item 29. Enter the name, grade and organization of the accused's commander.

- Item 30. Accused's commander signs in this block.
- Item 31. Convening authority will insert the case number assigned to that case in numerical sequence, according to the date received by the convening authority. Use year and consecutive numbering for each case. Example: 1975-1; 1975-2; 1975-3; etc., and start a new each year.
- Item 32. To be completed by Summary Court Officer. NOTE: A properly completed form (see Annex 9) should be attached to charge sheet. If not, Summary Court Officer will take the action required.
- Item 33. Accused enters an "X" in proper block.
- Item 34. Accused signs in this block.
- Item 35. Completed by Summary Court Officer, as applicable.
- Item 36. Completed only if item 35 is checked, as applicable.
- and  
Item 37.
- Item 38.  
thru  
Item 41. Completed by Summary Court Officer as applicable.
- Item 42. Insert number of previous convictions, if any, considered by the Summary court Officer in assessing punishment.
- Item 43. Enter geographical location where and date when trial was conducted
- Item 44. Date of action entered in Item 41. (Date punishment imposed.)
- Item 45. Enter appropriate information.
- Item 46. Summary Court Officer signs in this block.
- Item 47. Enter organization of convening authority.
- Item 48. Enter geographical location of convening authority.
- Item 49. Enter date of action taken as shown in Item 50.
- Item 50. Enter action taken by convening authority with regard to sentence imposed in the trial.
- Item 51. Enter required information.
- Item 52. Signature of convening authority.
- Item 53. Officer responsible for the accused's records checks the appropriate boxes, and enters the required information.
- Item 54. Officer indicated in Item 53 signs in this block.

SAMPLE CHARGES AND SPECIFICATIONS

Charge I: Violation of the Military Code of Arkansas, Section 129

(\*1. Failure to go to Place of Duty.)

Specification 1: In that Private First Class Bill Jones, Arkansas Army National Guard, Company A, 39th Support Battalion, 39th Infantry Brigade (Sep), Arkansas did, at Little Rock Arkansas on or about 14 November 1980, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: The Ricks National Guard Armory in Little Rock, Arkansas.

(\*2. Leaving Place of Duty.)

Specification 2: In that Private First Class Bill Jones, Arkansas Army National Guard, Company A, 39th Support Battalion, 39th Infantry Brigade (Sep), Arkansas, did, at Little Rock, Arkansas on or about 14 November 1980, without authority, go from his appointed place of duty, to-wit: The Ricks National Guard Armory in Little Rock Arkansas.

Charge II: Violation of the Military Code of Arkansas, Section 130

(\*3. Missing Movement.)

Specification 1: In that Private First Class Bill Jones, Arkansas Army National Guard, Company A, 39th Support Battalion, 39th Infantry Brigade (Sep), Little Rock, Arkansas, did, at Little Rock, Arkansas on or about 14 November 1980 through design, miss the movement of Company A, 39th Support Battalion, 39th Infantry Brigade (Sep), Little Rock, Arkansas, with which he was required in the course of duty to move.

NOTE: If the investigation shows that the movement was missed through neglect instead of design, then the word neglect would be used in the above specification.

Charge III: Violation of the Military Code of Arkansas, Section 133

(\*4. Assault on Superior.)

Specification 1: In that Sergeant First Class Tim Williams, Arkansas Army National Guard, Company A, 39th Support Battalion, 39th Infantry Brigade (Sep), Little Rock, Arkansas, did, at building 203, Camp Robinson, North Little Rock, Arkansas, on or about 4 July 1981 assault Captain Tom Thomas, his superior Commissioned Officer, who was then in the execution of his office, by hitting him in the face with a wet mop.

Charge IV: Violation of the Military Code of Arkansas, Section 134

(\*5. Insubordinate Conduct toward a Noncommissioned Officer.)

Specification 1. In that Specialist Fourth Class Clifton Treat, Arkansas Army National Guard, Company D, 39th Support Battalion, 39th Infantry Brigade (Sep), Morrilton, Arkansas at the Company Orderly Room, on or about 7 June 1981 was disrespectful in language toward Sergeant First Class Morris Evans, his superior noncommissioned officer, who was then in execution of his office, by saying to him, "Stick it in your ear, you dumb square head", or words to that effect.

\*Titles given before each example of charge and specifications are provided for clarification in this Annex and such titles should be omitted in preparation of the charge sheets.

Annex 11  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE LETTER OF TRANSMITTAL OF COURT-MARTIAL CHARGES

HEADQUARTERS  
BATTERY A, 1ST BATTALION, 142D FIELD ARTILLERY  
ARKANSAS ARMY NATIONAL GUARD  
109 SW 8th Street  
Bentonville, Arkansas 72712

10 May 1981

SUBJECT: Court-Martial Charges in the Case PV2 David Ott, 215-54-2110

Commander  
1st Battalion, 142d Field Artillery  
Arkansas Army National Guard  
PO box 37  
Harrison Arkansas 72601

1. Forwarded herewith are Court-Martial charges for appropriate disposition (Inclosure 1).
2. Summaries of expected testimony and documentary evidence upon which the charges are based are inclosed (Inclosure 2).
3. All material witnesses are expected to be available at the time of trial.
4. There is evidence of \* \_\_\_\_\_ admissible previous conviction(s) of accused. A duly authenticated extract copy of accused's military records of previous convictions showing such conviction(s) is inclosed (Inclosure 3).
5. The character of the accused's military service prior to the offense(s) charged has been (excellent) (good) (fair) (unsatisfactory).
6. I recommend trial by Summary Court-Martial.

3 Incl

1. Charge Sheet (Orig and 4 cys)
2. Summaries of Expected Testimony (Orig and 4 cys)
3. Record of Previous Convictions (Orig and 4 cys)

HOWARD PERSINGER  
CPT, FA, AR ARNG  
Commanding

\* Insert exact number of previous convictions here, if any.

WARRANT (PRE-TRIAL CONFINEMENT)

THE STATE OF ARKANSAS

TO THE SHERIFF, \_\_\_\_\_ COUNTY, OF THE STATE OF ARKANSAS, GREETINGS:

Pursuant to Section 54, Military Code of Arkansas, YOU ARE HEREBY COMMANDED TO ARREST: \_\_\_\_\_

If to be found in your County and bring \_\_\_\_\_ before me, the undersigned authority at my office at \_\_\_\_\_ in \_\_\_\_\_ County, at once, then and there to answer

the State of Arkansas for an offense against the laws of this State, to wit:

VIOLATION OF THE MILITARY CODE OF ARKANSAS, SECTION \_\_\_\_\_ of which offense

\_\_\_\_\_ he is accused by written charges; under oath, of \_\_\_\_\_

filed before me.

HEREIN FAIL NOT but of this writ make due return, showing how you have executed the same.

Witness my official signature, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_

ALF LANGSTON  
MAJ, ORDC, AR ARNG  
Summary Court Officer

(To be reproduced locally)

OFFICER'S RETURN

Came to the hand the \_\_\_\_\_ day \_\_\_\_\_ A.D. 19\_\_\_\_, At \_\_\_\_\_ o'clock \_\_\_\_\_ H.  
and executed on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ H., by  
arresting the within named \_\_\_\_\_ in \_\_\_\_\_ County, Arkansas  
and taking his bond, or placing him in jail at \_\_\_\_\_.

Sheriff, \_\_\_\_\_ County, Arkansas

BY \_\_\_\_\_ DEPUTY

WARRANT (PRE-TRIAL CONFINEMENT)

COURT-MARTIAL CASE NO. \_\_\_\_\_  
SUMMARY COURT-MARTIAL  
THE STATE OF ARKANSAS  
VS.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WARRANT OF ARREST

Issued the \_\_\_\_\_ day of \_\_\_\_\_

A.D. 19 \_\_\_\_\_

Required Bail \$ \_\_\_\_\_

ALF LANGSTON  
MAJ, ORDC, AR ARNG  
Summary Court Officer  
430 Division Street  
Malvern, Arkansas 72104

(To be reproduced locally)

ANNEX 13  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE ORDER DETAILING SUMMARY COURT-MARTIAL

HEADQUARTERS, 39TH INFANTRY BRIGADE (SEP)  
ARKANSAS ARMY NATIONAL GUARD  
4700 West 8th Street  
Little Rock, Arkansas 72204

COURT-MARTIAL CONVENING ORDER  
NUMBER 12

28 June 1981

A Summary Court-Martial is hereby convened. It may proceed at the Ricks Armory, Little Rock, Arkansas or other suitable location to try such persons as may be properly brough before it. The court will be constituted as follows:

SUMMARY COURT-MARTIAL OFFICER

CPT JAMES R. JENKINS, 429-65-8051, HQ & HQ Co, 39th Inf Bde (Sep), Arkansas Army National Guard, certified, designated, and assigned in accordance with Section 70, Military Code Arkansas

COUNSEL

Thomas L. Mays, 430-84-6263, CPT, (Home Address, Phone Number) Co A 39th Spt Bn 39th Inf Bde (Sep), AR ARNG, DEFENSE COUNSEL, certified in accordance with this Reg., Section 3-6(c).

Robert H Crank, 431-86-2210, CPT (Home Address, Phone Number; Co A, 39th Spt Bn, 39th Inf Bde (Sep), AR ARNG, TRIAL COUNSEL, certified in accordance with this reg., Section 3-6(c).

BY ORDER OF THE COMMANDER:

OFFICIAL:

EDWARD C. BENTON  
LTC, INF, AR ARNG  
Executive Officer

DISTRIBUTION:

(Convening orders may be signed personally by the Officer having convening authority or may be authenticated in any Manner prescribed by regulation.)

ANNEX 14  
AR ARNG Reg 27-4  
AR ANG Reg 110-1

SAMPLE LETTER AND SUBPOENA DUCES TECUM.

HHC 1ST BATTALION 153D INFANTRY  
Arkansas Army National Guard  
Post Office Box 99  
Malvern, Arkansas 72905

Date \_\_\_\_\_

ABC Corporation  
500 Kane Building  
Little Rock, Arkansas 72203  
ATTN: Mr. Richard Stevens

Dear Mr. Stevens:

The attached subpoena duces tecum orders you, as president of ABC Corporation, to produce the books and records enumerated therein. This subpoena is issued pursuant to Section 92b of the Military code of Arkansas. Failure to appear at the time and place with the books and records specified in the subpoena is an offense under the laws of the State of Arkansas and may result in the issuance of an arrest warrant and punishment by commitment or fine, under Section 93 of the Code \_\_\_\_\_ (Maximum punishment: 6 months in jail, \$500., or both).

Your cooperation in this matter is appreciated.

Sincerely,

RICHARD MEDLOCK  
LTC, IN, AR ARNG  
Summary Court-Martial Officer

IN A SUMMARY COURT-MARTIAL OF ARKANSAS NATIONAL GUARD

NO. \_\_\_\_\_ THE STATE OF ARKANSAS vs. PRIVATE HENRY SMITH

TO THE SHERIFF, \_\_\_\_\_ COUNTY OF THE STATE OF ARKANSAS GREETINGS:

You are commanded to summon: Mr. Richard Stevens, President of ABC Corporation and direct that person, corporation, (or its representative) to bring the documents, records, or items enumerated below:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

to be and personally appear at 9:00 o'clock A.M. on the 30th day of December, 1980 before a Summary Court-Martial of Arkansas National Guard to be held within and for said Arkansas National Guard, (Address - Street, City) then and there to present the above records and documents, to speak on behalf of the State of Arkansas in the above styled and numbered cause, now pending in said Summary Court-Martial, and there to remain from day to day, and from term to term, until discharged, and due return hereof make according to law.

Issued and given under my hand in my capacity as convening authority this the 27th day of November, 1980.

JAMES JONES  
LTC, AR, ARARNG  
Summary Court-Martial Officer

OFFICER'S RETURN

Received same day issued, and executed by reading this subpoena in the presence and hearing of the within named witnesses on the dates as herein stated, Viz.:

DATE OF SERVICE	NAME	DATE OF SERVICE	NAME

SHERIFF, \_\_\_\_\_ COUNTY, ARKANSAS

BY \_\_\_\_\_ DEPUTY

ANNEX 15  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE LETTER AND SUBPOENA AS WITNESS

HHC 1ST BATTALION 153D INFANTRY  
Arkansas Army National guard  
Post Office Box 99  
Malvern, Arkansas 72905

Date \_\_\_\_\_

Mr. Robert Roe  
124 Johnson Street  
Little Spring, Arkansas 72205

In re: Appearance as Witness

Dear Mr. Roe:

This subpoena you have just received has been issued pursuant to Section 92 and 93, Military Code of Arkansas. Careful attention should be paid to the time, place and date your presence is required in the subpoena. Failure to appear at the appointed time and place is an offense under the laws of the State of Arkansas, and may result in the issuance of an arrest warrant and punishment by commitment or fine.

You may be entitled to a witness fee, reimbursement for mileage, meals and lodging. The State Adjutant General's Office will forward the forms you will need for compensation and reimbursement for expenses. Please bring these forms with you so that your participation during the trial proceeding may be certified.

Your cooperation in this matter is appreciated.

Respectfully,

ROBERT RYAN  
LTC, IN, ARARNG  
Commanding

SUBPOENA

In a \_\_\_\_\_ Court-Martial of the Arkansas National Guard.

NO. \_\_\_\_\_ The State of Arkansas, vs. \_\_\_\_\_

To The Sheriff, \_\_\_\_\_ County, State of Arkansas.

Greetings:

You are Commanded to Summon: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

to appear on the \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, at \_\_\_\_\_

o'clock \_\_.M., before a \_\_\_\_\_ Court-Martial of the

Arkansas National Guard, at \_\_\_\_\_

in the case of \_\_\_\_\_

Failure to appear and testify may be punishable by fine or imprisonment,  
as provided under Arkansas Statute.

Bring this Subpoena with you and do not depart from the Court without  
permission.

Subscribed at \_\_\_\_\_, this \_\_\_\_\_ day

of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Signature, Grade, and Military Status)

OFFICER' RETURN

(Copy from 14-2)

ANNEX 16  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE NOTICE OF TRIAL SETTING

HEADQUARTERS, 39TH INFANTRY BRIGADE (SEP)  
4700 West 8th Street  
Little Rock, Arkansas 72204

Date \_\_\_\_\_

TO: Private Evans Moore  
540 Main Street  
Podunk, Arkansas 73301

1. Charges for violating the Military Code of Arkansas as set out in the attached Charge Sheet have been received at this Headquarters. They are referred for trial by Summary Court-Martial.

2. You are directed to appear before such court at the Ricks National Guard Armory, in Little Rock, Arkansas, at 10:00 o'clock A.M. on the 10th day of July 1981, for trial under such charges.

3. Failure to appear at the time and place directed will cause a warrant for your arrest to be issued.

FOR THE COMMANDER

MARVIN ROSSMAN  
Major  
Adjutant

- NOTE: 1. This letter is to be delivered in person or sent by certified mail, return receipt requested, postage prepaid.
2. Underlined items are to be completed with applicable data.

ANNEX 17  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE PROMULGATING ORDERS

HEADQUARTERS, 2ND BATTALION, 114TH FIELD ARTILLERY  
ARKANSAS ARMY NATIONAL GUARD  
Post Office Box 1336  
Starkville, Arkansas 79759

SUMMARY COURT-MARTIAL  
NUMBER \_\_\_\_\_

15 August 1981

Before a summary court-martial which convened at Little Rock, Arkansas pursuant to Court-Martial Convening Order Number 30, Headquarters, 39 Infantry Brigade (Sep) 2 August 1981, was arraigned and tried:

Private (E-2) Frank L Martin, 426-56-8591, Arkansas Army National Guard, Company 1, 2nd Battalion, 153rd Infantry, 39th Infantry Brigade (Sep).

Charge I: Violation of the Military Code of Arkansas, Section 153, MCA.

Specification 1: In that Private (E-2) Frank L Martin, Arkansas Army National Guard, Company A 2nd Battalion, 153rd Infantry, 39th Infantry Brigade (Sep), on or about 5 August 1981, at Fort Chaffee Arkansas being posted as a sentinel did leave his post before he was regularly relieved.

Specification 2: In that Private (E-2) Frank L Martin, Arkansas Army National Guard, Company A, 2nd Battalion, 153rd Infantry 39th Infantry Brigade (Sep), on or about 5 August 1981, at Fort Chaffee, Arkansas being posted as a sentinel, was found sleeping on his post.

Charge II: Violation of the Military Code of Arkansas, Section 132, MCA.

Specification: In that Private (E-2) Frank L Martin, Arkansas Army National Guard, Company A, 2nd Battalion, 153rd Infantry, 39th Infantry Brigade (Sep), did at Ft Chaffee, Arkansas on or about 5 August 1981, behave with disrespect toward First Lieutenant James P Rhodes, his superior officer, by saying to him, "I am sick and tired of being bossed by people who don't know what they are doing. You are just like all the other officers I have seen."

PLEAS

To all Specifications and Charges: Not Guilty

FINDINGS

Of Specification 1, Charge I: Guilty  
Of Specification 2, Charge I: Not Guilty  
Of Charge I: Guilty  
Of the Specification and Charge II: Guilty

SENTENCE BY SUMMARY COURT-MARTIAL OFFICER

To be confined at hard labor for 25 days and to be reduced to the grade of Private (E-1) . (One previous conviction considered)

The sentence was adjudged on 18 August 1981.

ACTION\*

HEADQUARTERS, 2ND BATTALION, 153RD INFANTRY,  
ARKANSAS ARMY NATIONAL GUARD  
2302 East Moore Avenue  
Searcy, Arkansas 72143

18 August 1981

In the foregoing case of Private (E-2) Frank L Martin, 426-56-8591, Arkansas Army National Guard, Company A, 2nd Battalion, 153rd Infantry, 39th Infantry Brigade (Sep), the sentence is approved and will be duly executed. The accused will be confined in the Pulaski County Jail, Pulaski County, Arkansas, and the confinement will be served therein or elsewhere as competent authority may direct.

/s/ Charles N Martin  
/t/ Charles N Martin  
LTC, IN, AR ARNG  
Commanding

BY ORDER OF THE COMMANDER:

OFFICIAL:

TIMOTHY JOHNS  
MAJ, IN, AR ARNG  
Adjutant

DISTRIBUTION:

\*Action of the convening authority will be copied verbatim, including heading, date and signature.

ANNEX 18  
AR ARNG REG 27-4  
AR ANG REG 110-1

SAMPLE LETTER OF TRANSMITTAL  
OF SUMMARY COURT-MARTIAL RECORD AND FINE

HEADQUARTERS, 2ND BATTALION,  
153d INFANTRY, 39TH INFANTRY BRIGADE (SEP)  
ARKANSAS ARMY NATIONAL GUARD  
2303 East Moore Avenue  
Searcy, Arkansas 72143

Date \_\_\_\_\_

SUBJECT: Transmittal of Summary Court-Martial Record and Fine

TO: ADJUTANT GENERAL  
ARKANSAS MILITARY DEPARTMENT  
CAMP ROBINSON  
NORTH LITTLE Rock AR 72118

1. Attached is Summary Court-Martial Record No. \_\_\_\_\_ in the case of \_\_\_\_\_  
Proper entries in the member's service record should be made.

2. Attached is (check) (money order) made payable to the Treasurer of the State of Arkansas in the amount of \$ \_\_\_\_\_ in payment of the fine(s) assessed on these charge sheets. This money forwarded in accordance with the provisions of Section 171, MCA.

FOR THE COMMANDER

CHARLES N MARTIN  
LTC, IN, AR ARNG  
Commander

SAMPLE SUMMONS TO SHOW CAUSE FOR NONPAYMENT OF FINE

THE STATE OF ARKANSAS

TO THE SHERIFF OF \_\_\_\_\_ COUNTY, ARKANSAS, LAWFUL OFFICER THEREOF,

GREETING:

WHEREAS, On the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_\_, in a Summary Court-Martial duly and legally convened in \_\_\_\_\_ County, Arkansas, in Case No. \_\_\_\_\_ of the State of Arkansas, vs. \_\_\_\_\_, Defendant, a Judgment was rendered by said Court

in favor of the State of Arkansas against the said Defendant for the sum of \_\_\_\_\_ Dollars, and there is due and unpaid on said Judgment the amount of \_\_\_\_\_ Dollars;

YOU ARE THEREFORE COMMANDED to execute a true and correct copy of the within writ to the said Defendant informing him that he shall personally appear at \_\_\_\_\_ (A.M.)(P.M.) the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_, Arkansas, to show cause why the said defendant should not be held in contempt of Court for non-payment of fine of \_\_\_\_\_ said Defendant.

HEREIN FAIL NOT, but of this Writ make due return in accordance with the laws of this State, showing how you have executed the same.

WITNESS my official signature this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_.

ROBERT M. TALBERT  
LTC, AR ARNG  
Summary Court-Martial Officer

Punitive Section's of MCA

- Section 119. Persons to be Tried or Punished.
- Section 120. Principals
- Section 121. Accessory After the Fact
- Section 122. Conviction of Lesser Included offense.
- Section 123. Attempts.
- Section 124. Conspiracy.
- Section 125. Solicitation.
- Section 126. Fraudulent Enlistment, Appointment, or Separation.
- Section 127. Unlawful Enlistment, Appointment or Separation.
- Section 128. Desertion.
- Section 129. Absent Without Leave.
- Section 130. Missing Movement.
- Section 131. Contempt Towards Officials.
- Section 132. Disrespect Toward Superior Commissioned Officer.
- Section 133. Assaulting or Willfully Disobeying Superior Commissioned Officer.
- Section 134. Insubordinate Conduct Toward any Non-commissioned Officer.
- Section 135. Failure to obey Order or Regulation.
- Section 136. Cruelty and Maltreatment.
- Section 137. Mutiny or Sedition.
- Section 138. Resistance, Breach of Arrest, and Escape.
- Section 139. Releasing Prisoner Without Proper Authority.
- Section 140. Unlawful detention of Another.
- Section 141. Non-compliance with Procedural Rules.
- Section 142. Misbehavior Before the Enemy

- Section 143. Subordinate Compelling Surrender.
- Section 144. Improper Use of Countersign.
- Section 145. Captured or Abandoned Property.
- Section 146. Aiding the Enemy.
- Section 147. Misconduct as a Prisoner.
- Section 148. False Official Statements.
- Section 149. Military Property - Loss, Damage, Destruction or Wrongful Disposition.
- Section 150. Property Other than Military Property - Waste, Spoilage or Destruction.
- Section 151. Improper Hazarding of Vessel.
- Section 152. Drunken or Reckless Driving.
- Section 153. Drunk on Duty - Sleeping on Post - Leaving Post Before Relief.
- Section 154. Dueling.
- Section 155. Malingering.
- Section 156. Riot or Breach of Peace.
- Section 157. Provoking Speeches or Gestures.
- Section 158. Perjury.
- Section 159. Frauds Against the Government.
- Section 160. Stealing Goods of not more than Thirty-Five Dollars Value.
- Section 161. Conduct Unbecoming an Officer and a Gentleman.
- Section 162. General Article.

ANNEX 21  
AR ARNG REG 27-4  
AR ANG REG 110-1

STATION	DATE	TIME	FILE NUMBER
Last Name, First Name, Middle Name		Social Security Number	Grade
ORGANIZATION OR ADDRESS			

RIGHTS WAIVER CERTIFICATE

RIGHTS

The investigator whose name appears below told me that he is with the Arkansas National Guard and that he wanted to question me about the following offense(s) of which I am suspected/accused: \_\_\_\_\_

Before he asked me any questions about the offense(s), however, he made it clear to me that I have the following rights:

I do not have to answer any questions or say anything. Anything I say or do can be used as evidence against me in a criminal trial. I have a right to talk to a lawyer before or after questioning or have a lawyer present with me during questioning. This lawyer can be a civilian lawyer of my own choice at my own expense or a military lawyer detailed for me at no expense to me.

I have a right to talk to a lawyer before or after questioning or have a lawyer present with me during questioning. If I cannot afford a lawyer and want one, arrangements will be made to obtain a lawyer or me.

I am now willing to discuss the offense(s) under investigations, with or without a lawyer present.

I have a right to stop answering questions at anytime or speak to a lawyer before answering further, even if I sign the waiver below.

WAIVER

Understanding my rights as stated above, I am now willing to discuss the offense(s) under investigation without a lawyer being present.

WITNESS (If available)

\_\_\_\_\_  
Organization or address and phone

\_\_\_\_\_  
Organization or address and phone

\_\_\_\_\_  
Signature of interviewee

\_\_\_\_\_  
Signature of investigator

\_\_\_\_\_  
Typed name of investigator

\_\_\_\_\_  
Investigator's organization

---

NON-WAIVER

I do not want to give up my rights:

I want a lawyer.

I do not want to be questioned or say anything.

Signature of interviewee

---

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823)  
SUBSEQUENTLY EXECUTED BY THE SUBJECT SUSPECT/ACCUSED

---

AGARK Form SJA3

---

RIGHTS WARNING PROCEDURE

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A. THE WARNING

Inform the suspect/accused of:

1. Your official position.
2. Nature of offense(s).
3. The fact that he is a suspect/accused.

Then advise the suspect/accused of his rights as follows:

1. YOU DO NOT HAVE TO ANSWER MY QUESTIONS OR SAY ANYTHING.
2. ANYTHING YOU SAY OR DO CAN BE USED AS EVIDENCE AGAINST YOU IN A CRIMINAL TRIAL.
3. YOU HAVE A RIGHT TO TALK TO A LAWYER BEFORE OR AFTER QUESTIONING OR HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE A CIVILIAN LAWYER OF YOUR OWN CHOICE AT YOUR OWN EXPENSE OR A MILITARY LAWYER DETAILED FOR YOU AT NO EXPENSE TO YOU. YOU HAVE A RIGHT TO TALK TO A LAWYER BEFORE OR AFTER QUESTIONING OR HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, ARRANGEMENTS WILL BE MADE TO OBTAIN A LAWYER FOR YOU.
4. IF YOU ARE NOW WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION WITH OR WITHOUT A LAWYER PRESENT, YOU HAVE A RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME OR SPEAK TO A LAWYER BEFORE ANSWERING ANY FURTHER, EVEN IF YOU SIGN A WAIVER CERTIFICATE.

Make certain the suspect/accused fully understands his rights.

B. THE WAIVER

DO YOU WANT A LAWYER AT THIS TIME?

(If the suspect/accused says "yes", stop the questioning until he has a lawyer.) (If suspect/accused says "no", ask him the following questions)

"AT THIS TIME, ARE YOU WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION?"

(If the suspect/accused says "no", stop the interview and have him read and sign the non-waiver certificate or the other side of this form).

C. SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he has stated that he understands his rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of strict interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATION STATEMENTS:

- (1) If the suspect/accused has made spontaneous statements before being properly advised of his rights, he should be told that such statements do not obligate him to answer further questions
- (2) If suspect/accused was questioned as such previously without being properly advised of his rights, he should be told that statements made at that time cannot be used against him and do not obligate him to answer further.

NOTE: If (1) or (2) apply, the fact that the suspect/accused was advised accordingly should be noted on waiver certificate and initialed by the suspect/accused

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ARNG SJA FORM 3

CONTROL SHEET FOR PRELIMINARY INQUIRY  
(Control Sheet Number 1)

Name, Rank, SSN, and Organization of SM:

Date:

Possible offenses:

At the end of this checklist, you will find an explanation of terms used; a list of needed forms, and instructions concerning use of this control sheet.

1. UNIT CDR: Record name, rank, SSN, and organization at top of this form. List possible offenses. Record date you received report of misconduct. Assign top priority to preliminary inquiry and disposition of case to preserve disciplinary needs of unit and preclude violation of speedy trial and other rights of accused.
2. UNIT CDR: Make an investigation or request investigative assistance from the Provost Marshal if case involves serious offense, or if minor offense involves complex transaction.
3. UNIT CDR: Review preliminary inquiry requirements of MCM, U.S. (1969), para 32b and contact SJA to plan inquiry.
4. UNIT CDR: Obtain witness statements and other documentary evidence from Provost Marshal or have other available personnel perform investigation. Where you are satisfied that there is sufficient evidence to fulfill your responsibilities under MCM, para 32, U.S. (1969), there should be no need for further investigation.
5. UNIT CDR: if further investigation is necessary, coordinate with the SJA. Whenever possible, use DA Form 2823 to take statements and AGARK SJA Form 3 (Annex 21) to administer warnings.
6. UNIT CDR: If, as a result of the preliminary inquiry, it appears that court-martial, disciplinary action or elimination proceedings will be initiated, prepare DA Form 268 (Suspension of Favorable Personnel Actions.)
7. UNIT CDR: If pretrial restraint has been imposed, enter form of restraint and dates at right.
8. UNIT CDR: Review the evidence and the standards for selection of the proper disposition.
9. Check the disposition below and process immediately. Note that certain internal administrative personnel actions may be taken in combination with other actions.

(Control Sheet Number 2)

Control Sheet for Recommended Disposition of Disciplinary Violations

a. \_\_\_\_\_ NO ACTION WARRANTED.

b. INTERIM ADMINISTRATIVE PERSONNEL ACTIONS.

1. \_\_\_\_\_ Counseling.
2. \_\_\_\_\_ Corrective Training.
3. \_\_\_\_\_ Withholding of Privileges.
4. \_\_\_\_\_ Restriction.
5. \_\_\_\_\_ Efficiency Reports and other Ratings.
6. \_\_\_\_\_ Rehabilitation and Reassignment.
7. \_\_\_\_\_ MOS Reclassification.
8. \_\_\_\_\_ Admonitions, Reprimands and Censures.
9. \_\_\_\_\_ Administrative Reduction for Inefficiency.
10. \_\_\_\_\_ Bar to Enlistment.
11. \_\_\_\_\_ Security Classification Change.
12. \_\_\_\_\_ Pecuniary Liability of Service members for Negligence or Misconduct.

c. \_\_\_\_\_ NONJUDICIAL PUNISHMENT, SECTION 59, MCA.

d. \_\_\_\_\_ ADMINISTRATIVE DISCHARGE.

e. \_\_\_\_\_ TRIAL BY COURT-MARTIAL.

1. \_\_\_\_\_ Summary Court-Martial.
2. \_\_\_\_\_ Special Court-Martial.
3. \_\_\_\_\_ "BCD" Special Court-Martial.
4. \_\_\_\_\_ General Court-Martial.

AR ARNG Reg No. 27-4AR ANG Reg No 110-1

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The proponent of this regulation is the State of Arkansas Judge Advocate General's Office. Users are invited to send comments to the Staff Judge Advocate, ATTN: GS-JA Military Department, State of Arkansas, Camp Robinson, North Little Rock, AR 72118.

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BY ORDER OF THE GOVERNOR:

FRED M CARTER  
Major General  
The Adjutant General

DISTRIBUTION:  
A,B,C