

## MILPERSMAN 5812-010

### SETTING ASIDE NONJUDICIAL PUNISHMENTS (NJP)

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<b>References</b>	(a) Uniform Code of Military Justice (UCMJ), article 15(d) (b) Manual for Courts-Martial (MCM), part V, paragraph 6(d), paragraph 7(f) (c) JAGINST 5800.7F, Manual of the Judge Advocate General (JAGMAN), section 0118(b)
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1. **Policy.** This article applies to both officer and enlisted personnel. Per references (a) through(c), the nonjudicial punishment (NJP) authority who imposed punishment, the commander who imposed NJP, a successor in command, or the next superior authority may set aside punishment in whole or in part. This action should ordinarily be exercised only when the authority believes that, under all circumstances, the punishment resulted in a clear injustice. The power to set aside an executed punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed, which in the absence of unusual circumstances, 4 months is a reasonable time.

2. **Effects of Improper Set Asides.** Commanders should be cognizant of the effects of improperly setting aside an NJP. Such effects can include:

- a. Disadvantaging Sailors who have not committed misconduct, especially in the area of advancement;
- b. Denying detailers and gaining commands relevant information concerning the reliability of the affected Sailors;
- c. Subjecting the Navy to financial reimbursement in the cases of restored reduction of rate; and

d. Denying a board relevant information regarding the Sailor's fitness for promotion, continuation, a special program, or senior leadership position.

### 3. Action

a. To set aside NJP punishment (in whole or in part), the NJP set aside authority shall prepare and personally sign (not "by direction") a letter of notification (LON) in the format shown in paragraph 4 below. If a set aside is directed by a command other than the command that imposed the NJP, the submitting NJP set aside authority shall send an information copy to the command that initially imposed punishment.

b. The LON shall explain why the punishment is being set aside, including why the punishment has resulted in a clear injustice.

c. LONs directing a set aside outside the 4-month window shall justify the unusual circumstances for the delay.

d. The LON must be sent via mail or e-mail to Bureau of Naval Personnel (BUPERS), Office of Legal Counsel (BUPERS-00J), copying the first flag officer in the NJP set aside authority's chain of command. If the NJP set aside authority is a flag officer, this requirement is waived.

e. After confirming an appropriate authority set aside the punishment, if the entire NJP punishment was set aside, BUPERS-00J will direct NAVPERSCOM (PERS-832) for enlisted and NAVPERSCOM (PERS-834) for officers to expunge all references to the NJP contained within internal databases. NAVPERSCOM (PERS-832) and NAVPERSCOM (PERS-834) will subsequently direct NAVPERSCOM, Records Management Policy Section (PERS-313) to expunge all documents pertaining to the NJP that have been set aside from the Sailor's official military personnel file. In addition, NAVPERSCOM (PERS-832) and NAVPERSCOM (PERS-834) will direct the Navy Standard Integrated Personnel System (NSIPS) help desk to expunge the NSIPS transactions associated with NJP that is set aside. If a reduction in rate is set aside, the date of restoration must revert to original date of advancement and time in rate, thereby entitling member to full reimbursement of back pay. BUPERS-00J will notify the NJP set aside authority and member when NAVPERSCOM review has been completed and local action is appropriate.

f. The NJP set aside authority will ensure all local records are purged of any notations of NJP hearing and or punishments awarded which have been set aside, and their residual effects.

g. NAVPERSCOM does not act as approval authority or have capability to correct or adjust pay and allowances. Correction of pay and allowances is to be accomplished by the command personnel office or servicing personnel support detachment (PERSUPP DET).

h. Performance evaluation documents and related correspondence may only be removed from the member's record if a special evaluation was issued as a result of NJP. For periodic or transfer reports, specific references to NJP, trait marks, and promotion recommendations may not be changed by NAVPERSCOM as a result of the set aside action. For records or documents which may not be corrected by set aside action, Service member should be advised to petition the Board for Correction of Naval Records (BCNR) for additional corrective action.

**Note 1: Mitigation of punishment** is a reduction in either the quantity or quality of a punishment, its general nature remaining the same. To mitigate punishment, per reference (b) (paragraph 6b), use:

- NAVPERS 1070/607 Court Memorandum (**if pay is involved**)  
or;
- NAVPERS 1070/613 Administrative Remarks (**if no pay is involved**);

to correct the original document. Reduction in pay grade may be mitigated to forfeiture of pay **only** within 4 months after date of execution, and forfeitures may not exceed the total amount of forfeitures that could have been awarded at NJP. Both original and corrected NAVPERS 1070/607 Court Memorandums will be filed as part of member's official record. Do not issue an LON in a modified format to NAVPERSCOM (PERS-832) for mitigation.

**Note 2:** See MILPERSMAN 1430-020 for procedures regarding advancement after reduction in rate.

4. **Sample LON.** Use this LON for setting aside an NJP (use the proper letter format below):

From: [position, command setting aside punishment]  
To: Bureau of Naval Personnel, Millington (BUPERS-00J)  
Subj: [partial] SET ASIDE OF NJP ICO [grade/rate, name, last 4 SSN]

Ref: (a) Manual for Courts-Martial (MCM), Part V, Paragraph 6d

1. As the [nonjudicial punishment (NJP) authority who imposed punishment, the commander who imposed NJP, the imposing NJP authority's successor in command, or the next superior authority of the imposing NJP authority], I hereby set aside [(state punishment being set aside) or (the NJP proceeding) in case of [grade/rate, name]. All rights, privileges, and property affected by virtue of execution of this [or if partial, this part of the punishment] punishment shall be restored. Per reference (a), request you remove from [grade/rate, name's] official record all reference to [this punishment or NJP hearing] which has been set aside. Request copy-to addressees take appropriate restorative action in case of [grade/rate, name] and notify me and member concerned when completed.

2. Following information concerning this action is provided:

a. Name: [grade/rate, name, SSN]

b. Date of NJP: (date)

c. Imposing Command: [If different from command setting aside, indicate by Standard Navy Distribution List long title and forward a copy of letter of notification (LON) to that command.]

d. Offenses of which member was found guilty:

e. Punishment awarded:

f. Punishment being set aside:

g. Rationale for set aside: [Describe why the punishment is being set aside, including the "clear injustice" warranting set aside.]

h. Unusual circumstance(s): [If set aside is to take place greater than 4 months since punishment was executed, explanation as to the unusual circumstance(s) present.]

3. This letter shall not be filed in [grade/rate, name] official record, but shall be destroyed after your action is complete.

4. POC: [name, telephone number]

Signature of NJP Set Aside Authority  
(not "By direction")

Copy to:

(first flag officer in NJP set aside authority's chain of command)  
(command which imposed punishment)  
(cognizant personnel office)  
(cognizant disbursing office if pay affected)  
(member concerned)

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