

**Chapter 07 – Discipline**

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**Part 1 – General Discipline****07101 POLICY**

- A. Discipline depends in a large degree upon the example set by commanding officers, aircraft commanders, and other supervisory personnel in authority, and may be maintained in many cases by their own attention to duty, personal influence, tact, and discretion. These leaders shall show in themselves good examples of honor, patriotism, subordination, and fidelity to their oaths of office, be zealous in the performance of the duties entrusted to them, and vigilant regarding the conduct of all persons under their authority.
- B. The disciplinary measures included in this chapter are intended to address instances of misconduct and can be used as instruments to address poor performance.
- C. Discipline is considered appropriate where other administrative measures are considered inadequate or inappropriate and more stringent measures must be taken to correct, educate, and reform an offending NOAA Corps officer or deter others from similar conduct. Serious offenses may warrant the suspension or dismissal of a NOAA Corps officer. A rating supervisor, aircraft commander, commanding officer, or center commanding officer who has either witnessed misconduct or received a report concerning the misconduct of a NOAA Corps officer over whom they exercise primary authority shall institute the appropriate disciplinary action.
- D. At the discretion of the rating supervisor, aircraft commander, commanding officer, or center commanding officer, a preliminary inquiry may be made to substantiate the basic factual material upon which the initial determination will be made as to whether or not discipline or suspension is warranted. Caution must be exercised in conducting such inquiries so as not to prejudice either the rights of the NOAA Corps officer concerned or the NOAA Corps' ability to administer discipline. If warranted, suspension from duty with pay should be imposed (see NCD 07105). If in the course of such an inquiry it becomes clear that the matter involves a serious violation of these directives, the inquiry will be suspended and the matter referred, through the chain of command, to the Director, for further action. Should the Director's position be vacant or the Director, otherwise incapacitated, the Under Secretary or Deputy Under Secretary of Commerce for Oceans and Atmosphere (Deputy Under Secretary), will exercise the Director's authority regarding discipline under this chapter.
- E. Any NOAA Corps officer who is a witness to or has direct evidence of a violation of these directives by a NOAA Corps officer should report such violation to the immediate supervisor of the NOAA Corps officer concerned.

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- F. Many instances of waste, mismanagement, or minor infractions of standards of conduct can be resolved by responsible program officials without the intervention of the Office of the Inspector General (OIG). If practical, the NOAA Corps officers should, in the first instance, report evidence of such occurrences to responsible program officials for action. Allegations concerning serious matters, such as possible violations of the United States criminal code which may warrant the intervention of the OIG, should be reported immediately, through the chain of command, to the appropriate agency liaison (see NCD 07102B), for referral to the OIG in accordance with Department Administrative Order 207-10 – Inspector General Investigations (Appendix 7.1). If this is not practical, if a NOAA Corps officer desires that any disclosure to the OIG be confidential, or if the matter is not satisfactorily resolved, the NOAA Corps officer should report the matter directly and immediately to the OIG (see NCD 07302B). A NOAA Corps officer will not suffer reprisal for making a complaint or disclosing information to the OIG or for evidencing an intention to make or disclose such information, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

**07102 DEFINITIONS**

- A. Accused Officer - A NOAA Corps officer who is the subject of a DB.
- B. Agency Liaison - For purposes of reporting matters involving NOAA Corps officers to the OIG, the agency liaison is the Director, Marine and Aviation Operations Centers (MAOC).
- C. Commanding Officer or Aircraft Commander – NOAA Corps officer who is a commanding NOAA Corps officer of ships, aircraft, field parties or detached units when operating outside the immediate vicinity of the base from which said units are supervised; heads of NOAA Line or Staff Offices; heads of major NOAA Program Offices; or, NOAA Corps officers in charge.
- D. Center Commanding Officer - A NOAA Corps officer in the position of Commanding Officer of a center within NOAA Marine and Aviation Operations. For purposes of this chapter, the center commanding officer for all NOAA Corps officers not assigned to MOC, AOC, or CPC is the Director, MAOC.
- E. Formal Proceedings - Disciplinary proceedings conducted by a board appointed by the Director. These proceedings are designed to address instances of serious misconduct that may warrant disciplinary action more severe than any informal disciplinary measures. Formal proceedings may result in the administration of any of the disciplinary measures included in NCD 07105.
- F. Informal Proceedings - Proceedings that are intended to expeditiously handle offenses for which an oral admonition, letter of administrative censure, letter of reproof, or letter of

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reprimand is deemed by the disciplinary authority to be an adequate corrective measure, and are not serious enough to warrant a formal disciplinary action. An informal proceeding is conducted by an individual as opposed to a Disciplinary Board. Where informal proceedings are deemed inappropriate, the rating supervisor, aircraft commander, commanding officer, or center commanding officer should refer the matter up the chain of command for further action in accordance with these directives.

- G. Letter of Administrative Censure - A document in memo form signed by proper authority (see NCD 07104A) that contains a description of the specific conduct in question, remedial action to be taken, if appropriate, and the nature of future penalties if further infractions occur. A letter of administrative censure shall not become part of a NOAA Corps officer's Official Personnel File (OPF) but may be maintained by the disciplinary authority and used to support future disciplinary action. A letter of administrative censure is an informal disciplinary measure. See Appendix III for sample letter.
- H. Letter of Reprimand - A document in letter form signed by proper authority (see NCD 07104A) that contains a description of the specific conduct in question, remedial action to be taken, if appropriate, and the nature of future penalties if further infractions occur. The letter of reprimand is usually initiated by a commanding officer or aircraft commander and approved issue by the center commanding officer. However, this does not preclude a center commanding officer from initiating and issuing a letter of reprimand. A letter of reprimand, together with any rebuttal filed by the NOAA Corps officer (see NCD 07201D), shall become a permanent part of the officer's OPF except that the letter and any rebuttal, may, at the discretion of the Director, be removed at the expiration of a period of not less than three years, provided the reprimand contains such a removal provision. A letter of reprimand is an informal disciplinary measure. A copy of the letter of reprimand will be sent to the Director, who will place it in a file along with all disciplinary actions taken under this chapter, and another copy to the Director, CPC, who is responsible for ensuring it is placed in the NOAA Corps officer's OPF. See Appendix V for sample letter.
- I. Letter of Reproval - A document in memo form signed by proper authority (see NCD 07104A) that contains a description of the specific conduct in question, remedial action to be taken, if appropriate, and the nature of future penalties if further infractions occur. A letter of reproval, together with any rebuttal filed by the officer (see NCD7201D), shall become part of the NOAA Corps officer's OPF, but shall be automatically removed from the OPF no later than three years from the date of its addition to the OPF. A copy of the letter of reprisal will be sent to the Director, who will place it in a file along with all disciplinary actions taken under this chapter, and another copy to the Director, CPC, who is responsible for ensuring it is placed in the NOAA Corps officer's OPF. A letter of reproval is an informal disciplinary measure. See Appendix 7.4 for sample letter.
- J. Oral Admonishment - A conversation wherein a NOAA Corps officer is officially reprimanded for his/her conduct by a proper authority (see NCD 07104A). The specific conduct or performance must be detailed to the NOAA Corps officer along with suggested remedial action if appropriate, as well as future penalties if further infractions

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occur. Such an admonition shall be given in private and in a discerning manner. An oral admonishment is an informal disciplinary measure. No record of an oral admonishment shall be placed in a NOAA Corps officer's OPF, the supervisor shall keep a record of the date, time and subject of the oral admonishment.

- K. Rating Supervisor - The individual who is responsible for rating the NOAA Corps officer's performance on his/her Fitness Report for Commissioned Officers (NOAA Form 56-6).
- L. Restriction - Restriction is a restraint imposed upon a NOAA Corps officer by oral or written orders, limiting the NOAA Corps officer to a specified geographic area. It is usually applicable only to those NOAA Corps officers assigned to an operational and habitable vessel and is appropriate in response to requests by competent authorities, to ensure preservation of peace and order, or in the interests of public health or safety. Any order of restriction shall, as soon as possible, be put in writing and forwarded to the Director, CPC. If restricted for medical reasons, the order may be included in the officer's Official Medical File. Restriction, in itself, is not a disciplinary measure but may be used in conjunction with one. See Appendix 7.5 for sample order.
- M. Suspension From Duty With Pay - Removal of a NOAA Corps officer from duty and placement of the NOAA Corps officer in a non-duty pay status with no effect on the NOAA Corps officer's pay or rank. This action is normally appropriate either because of the presence of allegations of sufficient severity to warrant removal of the officer from duty as a precautionary measure pending full investigation of such allegations or because of pending formal involuntary separation action, disciplinary action, or medical fitness for duty evaluation.
- N Time Periods - Where deadlines are specified by a number of days, this means calendar days. If a deadline falls on a weekend or holiday, it shall be effective the next business day.

**07103 APPLICABLE AUTHORITIES**

- A. NOAA Corps officers are subject to the Standards of Ethical Conduct for Employees of the Executive Branch, including Part 1 of Executive Order 12674 and 5 CFR Part 2635, Employee Responsibilities and Conduct (Department Administrative Order 202-735A) as well as NOAA Corps Directives. Violations of these and other administrative directives shall be prosecuted accordingly.
- B. NOAA Corps officers assigned to or serving with the Armed Forces (including periods of training and full-time liaison duties) are subject to the Uniform Code of Military Justice (UCMJ), in accordance with 33 U.S.C. § 3061(c) and 10 U.S.C. § 802. Violations of the UCMJ will be prosecuted in accordance with the procedures established by the service the NOAA Corps officer was assigned to or serving with at the time the offense was

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committed. However, the authority to terminate the commission of or reduce in grade any such officer shall continue to reside with the NOAA Corps.

**07104 AUTHORITY TO ADMINISTER DISCIPLINE**

- A. The authority to administer informal disciplinary measures to NOAA Corps officers is herein delegated by the Director, to the Director Marine and Aircraft Operations Centers (MAOC), rating supervisors, commanding officers, aircraft commanders, and center commanding officers, except that only Director, MAOC, and center commanding officers have the authority to issue letters of reprimand.
- B. If a NOAA Corps officer's conduct warrants formal disciplinary action, it must be referred to the Director for disposition in accordance with this chapter. Attempts by any NOAA Corps officer to improperly influence, obstruct, or otherwise interfere with the proper exercise of this authority is strictly prohibited and shall be treated as conduct unbecoming an officer and result in formal disciplinary proceedings.
- C. A center commanding officer, aircraft commander or commanding officer who has delegated to a subordinate disciplinary authority pursuant to NCD 07202, and who has not withdrawn or formally limited that disciplinary authority, must permit the subordinate to exercise the delegated power without interference. The superior may not:
  - (1) direct, recommend, or suggest that the subordinate administer informal disciplinary proceedings in a particular case; or
  - (2) issue directives, orders, or "guides" that directly or indirectly suggest to subordinates that they should:
    - (a) use informal disciplinary proceedings rather than any other administrative procedure for particular categories of offenses, or
    - (b) impose predetermined amounts or types of punishment for particular categories of offenses.
- D. Except in the case of the Director, if a NOAA Corps officer being considered for disciplinary action is above the grade of captain, then the Deputy Under Secretary shall exercise the authority of the Director under these directives and the Director shall exercise the authority of Director, Marine and Aviation Operations Centers or center commanding officer.
- E. If the NOAA Corps officer under disciplinary consideration is the Director, the Under Secretary shall exercise the authority of the Director under these directives and the Under Secretary or the Deputy Under Secretary, as appropriate, shall exercise the authority of Director, MAOC or center commanding officer.

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- F. In the event that formal proceedings are deemed necessary and there is an insufficient number of senior grade officers to the NOAA Corps officer being charged to comprise a Disciplinary Board, then the Under Secretary or Deputy Under Secretary, as appropriate, shall appoint a sufficient number of senior NOAA officials at the Deputy Assistant Administrator level or above to properly constitute a board.

**07105 DISCIPLINARY AND OTHER MEASURES**

- A. Only certain disciplinary measures will be taken against NOAA Corps officers. They are listed here, in ascending order of severity, for informal and formal proceedings:

(1) Informal Disciplinary Measures

- (a) Oral Admonishment
- (b) Letter of Administrative Censure
- (c) Letter of Reprimand
- (d) Letter of Reprimand

(2) Formal Disciplinary Measures (require a Disciplinary Board)

- (a) Suspension From Duty at Reduced Pay
- (b) Reduction in Lineal Rank
- (c) Reduction in Pay Grade
- (d) Separation by Involuntary Discharge

(B) Administrative Absence

- (1) In addition to the above disciplinary measures, an administrative absence may be utilized where appropriate. Normally a suspension from duty will occur when it is determined to be in the best interests of the Government for a NOAA Corps officer to be removed from duty and placed in a non-duty pay status pending resolution of the matter. This action is normally appropriate either because of the presence of allegations of sufficient severity to warrant removal from duty as a precautionary measure pending full investigation of such allegations or because of

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pending formal involuntary separation action, disciplinary action, or medical fitness for duty evaluation. Any supervisor in the chain-of-command over the subject officer may make the determination to suspend the officer from duty with pay. All administrative absence from duty pursuant to this authority shall be immediately reported to the Director, CPC.

**07106 RECORDS EXAMINATION BOARD**

- A. A NOAA Corps officer may request, in writing to the Director, a Records Examination Board (REB) be appointed to determine whether or not the information contained in the officer's OPF should be corrected or removed. The request must identify the specific information in the OPF which is to be reviewed. At the discretion of the Director, a board of at least three NOAA Corps officers senior in rank to the NOAA Corps officer involved, who have not in any way participated in the disciplinary proceeding, may be appointed as a REB. The REB shall receive any evidence the NOAA Corps officer may wish to submit and shall make recommendations to the Director concerning corrections, deletions, or additions to the NOAA Corps officer's OPF. The process of requesting a REB shall not be used by any NOAA Corps officer as an attempt to reverse or appeal a decision by the Director. See NCD 10009.
- B. A request by a NOAA Corps officer for a REB shall entitle the NOAA Corps officer to present evidence either in person or by affidavit to the board. A summary of the record of such proceedings, along with the REB's recommendation, shall be shown to the NOAA Corps officer concerned before submission to the Director. If the NOAA Corps officer disagrees with the summary of the record or the recommendations of the REB, the NOAA Corps officer may submit in writing the reasons for disagreement to the Director. If the Director decides that a correction to the information contained in the NOAA Corps officer's OPF is warranted, the Director, CPC, will make the necessary corrections to the NOAA Corps officer's OPF. If warranted, the corrected OPF will be remanded to the Officer Personnel Board or Disciplinary Board for reconsideration of its original recommendation.

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**Part 2 – Informal Disciplinary Measures****07201 INFORMAL DISCIPLINARY PROCEEDINGS**

- A. Informal proceedings shall be conducted in an expeditious manner in order to ensure the continued maintenance of good order and discipline. At the discretion of the rating supervisor, aircraft commander, commanding officer, or center commanding officer, a preliminary inquiry may be made to substantiate the basic factual material upon which the initial determination will be made as to whether or not discipline is warranted. Caution must be exercised in conducting such inquiries so as not to prejudice either the rights of the NOAA Corps officer concerned or the NOAA Corps' ability to administer discipline. For offenses that are substantiated by a preponderance of evidence (i.e., the existence of the fact in issue is more probable than not or the supporting evidence is more convincing than the opposing evidence) the disciplinary authority shall take appropriate disciplinary action.
- B. Officials authorized to administer informal proceedings together with the corrective actions authorized are as follows:
- (1) Rating Supervisors, Aircraft Commanders, or Commanding Officers can administer:
    - (a) Oral Admonishment;
    - (b) Letter of Administrative Censure; and
    - (c) Letter of Reproval.
  - (2) Director, MAOC, or Center Commanding Officers can administer:
    - (a) Oral Admonishment;
    - (b) Letter of Administrative Censure;
    - (c) Letter of Reproval; and
    - (d) Letter of Reprimand.

Combinations of the penalties listed above are permitted at the discretion of the administering officer.

**Part 2 – Informal Disciplinary Measures**

- C. A letter of reprimand may be issued by a center commanding officer upon the recommendation of an aircraft commander or commanding officer, although such a recommendation is not required. If initiated by the aircraft commander or commanding officer, a draft letter of reprimand will be submitted to the center commanding officer for approval and issuance. The reprimand may contain a time specific removal provision that would make it eligible for removal from the NOAA Corps officer's Official Personnel File (OPF). Such a removal provision may not specify a time of less than three years. (See NCD 07102H). A copy of the issued letter of reprimand must be forwarded to the Director, who will place it in a file along with all disciplinary actions taken under this chapter, and another copy to the Director, CPC, who is responsible for ensuring it is put in the NOAA Corps officer's OPF.
- D. A NOAA Corps officer may rebut a letter of reprimand or letter of reproof provided the rebuttal is made in writing to the disciplinary authority within ten days of receipt of the letter by the NOAA Corps officer. Rebuttals shall be included with the letter of reprimand or letter of reproof in the NOAA Corps officer's OPF.

**07202 DELEGATION AND REFERRAL**

- A. Except for the authority to issue a letter of reprimand, a center commanding officer, aircraft commander or commanding officer may delegate informal disciplinary authority to a deputy or principal assistant, provided that:
- (1) when exercising such authority, the delegate is senior in grade to the NOAA Corps officer against whom the action is being taken;
  - (2) when taking any supplemental action, the delegate is senior in grade to the NOAA Corps officer against whom the action is being taken; and
  - (3) the delegation is in writing.

Persons who so delegate do not divest themselves of their own informal disciplinary proceeding authority to act in other unrelated matters.

- B. A NOAA Corps officer having disciplinary authority under this chapter shall refer all disciplinary matters up the chain of command for disposition if he/she determines that his/her authority may be insufficient to properly dispose of the matter.
- C. Civilian supervisors having disciplinary authority under this chapter and wishing to pursue disciplinary action other than oral admonishment, letter of administrative censure, or letter of reproof shall refer the matter to the Director, MOAC or a center commanding officer for disposition.

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**Part 3 – Formal Disciplinary Proceedings****07301 FORMAL DISCIPLINARY PROCEEDINGS**

- A. In situations involving serious misconduct that may warrant a disciplinary measure more severe than a letter of reprimand, formal proceedings shall be instituted against the NOAA Corps officer(s) involved. No disciplinary measure more severe than a letter of reprimand can be administered without a formal disciplinary proceeding except when the NOAA Corps officer has been found guilty by a civil authority of one or more criminal offenses and has been sentenced to confinement for a period in excess of 30 days in a Federal or State penitentiary or correctional institution, with or without suspension or probation. In this latter case, the Director shall take whatever formal disciplinary action against the NOAA Corps officer deemed is appropriate including separation by involuntary discharge without the need for a formal disciplinary proceeding.
- B. The following example of a formal disciplinary proceeding may help illustrate the process. A person with informal disciplinary authority believe that a NOAA Corps officer's misconduct may be severe enough to warrant a disciplinary measure exceeding the severity of a letter of reprimand. That person, in a memorandum through the chain of command to the Director, details the facts and circumstances surrounding the alleged misconduct. The Director then appoints an investigating officer who makes recommendations as to whether a Disciplinary Board should be convened. The Director either convenes a Disciplinary Board or refers the matter back down the chain of command for appropriate action which could include (anything) from exoneration to informal proceedings. If a Disciplinary Board is convened, a NOAA Corps' Advocate from the Department's Office of General Counsel (OGC) is appointed who draws up the notice of charges and allegations that is sent to the NOAA Corps officer and to the Disciplinary Board. When the Disciplinary Board convenes, the NOAA Corps' Advocate and the accused NOAA Corps officer are each provided the opportunity to make his/her case. The Disciplinary Board makes findings as to each allegation of misconduct and also makes disciplinary recommendations via its report to the Director. The accused NOAA Corps officer has the opportunity to review the record, file exceptions to the record, and/or request mitigation of the Disciplinary Board's recommendations. The Director may then either implement the Disciplinary Board's recommendations or take other action consistent with these directives.

**07302 INVESTIGATING OFFICER**

- A. Upon receipt of allegations of serious misconduct, the Director may appoint an investigating officer to investigate the facts and circumstances surrounding the alleged misconduct and provide a written summary (i.e., investigative report) to the Director. A recommendation as to whether or not a Disciplinary Board should be convened shall be included in the report.

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The investigating officer, who may be a NOAA Corps officer or a civilian, should be qualified to conduct investigations of the type indicated and unlikely to be summoned as a witness in the pending action. The investigating officer shall be furnished with such instructions, personnel, materials, and assistance as may be necessary to perform his/her duties.

- B. Allegations concerning serious matters, such as possible violations of the United States criminal code, which may warrant the intervention of the Office of the Inspector General (OIG) should be reported immediately, through the rating supervisor, commanding officer, aircraft commander or center commanding officer, to the appropriate agency liaison (see NCD 07102B) for referral to the OIG in accordance with Department Administrative Order 207-10, Inspector General Investigations (Appendix 7.1). If the NOAA Corps officer desires that any disclosure to the OIG be confidential, or if the matter is not satisfactorily resolved, the NOAA Corps officer should report the matter directly and immediately to the OIG (see NCD 07101F). Upon such referral, further proceedings shall not be conducted without the prior concurrence of the OIG, or until completion of the OIG investigation and a determination by the Director that a disciplinary board should be convened.
- C. All personnel shall cooperate with and furnish such information within their knowledge or position as may be required by the investigating officer.

**07303 DISCIPLINARY BOARDS**

- A. A Disciplinary Board (DB) to inquire into the conduct of a NOAA Corps officer shall be convened by the Director. The DB shall be composed of at least three people, two active-duty NOAA Corps officers and one civilian. The civilian member will be the NOAA Workforce Management Office Director or his/her designee. Members of the DB shall be senior in grade to the NOAA Corps officer who is the subject of the inquiry. The Chair of the DB shall be selected and designated by the Director from a list of qualified individuals previously approved by the Director under criteria established jointly with the OGC. The approved list shall be maintained by the Director. When a DB is ordered, instructions will be issued with the convening order outlining the method of procedure and the form in which the record and findings are to be submitted. The NOAA Corps officer whose conduct is to be investigated shall be accorded all of the rights of an accused person (see NCD 07307). The DB shall consider the evidence presented regarding allegations of offenses listed in Part 4 of this chapter. For an offense found proven by a preponderance of the evidence, the DB will recommend an appropriate penalty.

**Part 3 – Formal Disciplinary Proceedings**

- B. The record of the DB's proceedings shall be submitted for administrative action to the Director. The Director may adopt, mitigate, or ask the DB to reconsider any of the penalties originally recommended by the DB whenever, in his/her judgment, the facts or circumstances warrant. The Director may not levy penalties more severe than those recommended by the DB.
- C. No penalties recommended by the DB shall be executed until approved by the Director.
- D. Before final action by the Director, the accused NOAA Corps officer shall be provided with a copy of the record of the DB's proceedings (see NCD 07310) and an opportunity to take exception to that record and to request mitigation of the actions recommended by the DB (see NCD 07307L).
- E. Recommendations of the DB, upon approval by the Director, shall be carried into effect as soon as practicable.

**07304 DISCIPLINARY BOARD PROCEDURES**

- A. A DB may be convened to examine the facts and circumstances surrounding any occurrence, to determine upon whom the responsibility rests for malicious or negligent acts, or to determine the extent of guilt, culpability, or negligence of a NOAA Corps officer who has been ordered before the DB, and to recommend appropriate penalties. The junior NOAA Corps officer on the DB shall act as recorder unless a nonvoting recorder, who is not a member of the DB, has been designated. The duty of the recorder is to ensure that proper administrative procedures and details are attended to, including such matters as arrangements for appearance of witnesses, production of reports, etc.
- B. In the event witnesses are unable to appear before the DB, the DB may obtain statements under oath, either written or recorded. Appropriate notice and opportunity to participate shall be given to the accused NOAA Corps officer and the NOAA Corps' Advocate. Associated travel costs shall be borne by the respective parties except when, in the interests of basic fairness and at the discretion of the Director, the accused NOAA Corps officer's travel is authorized. Statements should be elaborated on by questioning, if possible, to adequately establish the pertinent facts, and shall be signed by the witness providing the statement.
- C. A NOAA Corps officer accused of misconduct shall have the right to be present during open sessions of the DB's proceedings and shall be accorded all of the rights stipulated in NCD 07307. If, during the proceedings, the NOAA Corps officer not previously charged with misconduct for the same or a related incident is implicated in such a way as to warrant a separate charge of misconduct, the NOAA Corps officer will be charged in accordance with these directives.

**Part 3 – Formal Disciplinary Proceedings****07305 DISCIPLINARY BOARD COUNSEL**

- A. The Director may appoint counsel to a DB to provide guidance on procedural matters and to assist in the interpretation of applicable laws and administrative directives. The appointment of counsel to the DB shall be made from a list of qualified individuals provided by the OGC.

**07306 NOAA CORPS' ADVOCATE**

- A. For each DB convened, the Director, will request from the OGC an attorney to act as advocate for the NOAA Corps. The NOAA Corps' Advocate acts as prosecutor on behalf of the NOAA Corps. This responsibility includes drafting and transmitting the notice of allegations and charges to the NOAA Corps officer who is being accused of misconduct and to the DB (see NCD 07307 and 07308G).

**07307 RIGHTS OF THE ACCUSED NOAA CORPS OFFICER**

- A. The NOAA Corps officer who is the subject of a DB shall be given at least 30 days advance written notice by the NOAA Corps' Advocate that such proceedings are being initiated. Such notice shall be sufficiently detailed, factual, and specific concerning each allegation against the accused NOAA Corps officer. A summary of the accused NOAA Corps officer's rights will also be included. The notice may effectively summarize the accused NOAA Corps officer's rights by including a copy of these directives and referring to it in the text of the notice. The notice will indicate the date, time, and place that the DB is scheduled to convene as well as the name, address, and telephone number of the NOAA Corps' Advocate. Such notice shall also indicate the names of those appointed to serve as DB members, the chair, and if other than the chair, the person who will serve as the official point of contact for all written correspondence.
- B. The accused NOAA Corps officer may appear in person, with or without counsel. The term "counsel" generally includes members in good standing of any bar of any state or the District of Columbia, or such other person as the accused NOAA Corps officer selects. The accused NOAA Corps officer shall not be reimbursed for expenses in connection with the assistance of counsel.
- C. The accused NOAA Corps officer may, at any time before the DB convenes or during the proceedings, submit to the DB any answer, deposition, sworn or unsworn statement, affidavit, certificate, or proposed stipulation.

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- D. The accused NOAA Corps officer may present witnesses before the DB. The accused NOAA Corps officer will be responsible for notifying witnesses he/she intends to present and arranging for their appearance at the time and place of the DB proceedings. An accused NOAA Corps officer may petition the Director, in writing, to produce such witness at Government expense. The Director's decision on such matters shall be final. However, effort will be made to produce at Government expense witnesses deemed necessary to ensure basic fairness to the accused NOAA Corps officer.
- E. The accused NOAA Corps officer and his/her counsel may object to the testimony of witnesses and may cross-examine witnesses.
- F. If the accused NOAA Corps officer declines to make a sworn statement, he/she may make an unsworn statement orally, in writing, or both. If the accused NOAA Corps officer makes an unsworn statement, the accused NOAA Corps officer will not be subject to cross-examination, however, the accused NOAA Corps officer may be impeached through the testimony of other witnesses.
- G. The accused NOAA Corps officer may challenge any member of the DB for cause and one member as a preemptory challenge. Challenges for cause must be in writing and submitted to the Director, no later than 15 calendar days before the date the DB is scheduled to convene.
- H. The accused NOAA Corps officer shall be furnished copies of the investigative report and statements of witnesses, if any, no later than 15 calendar days before the date the DB is scheduled to convene or at such time as the NOAA Corps officer is charged with the offense. These records may be supplemented up to, but not later than, the date the DB convenes.
- I. Except as provided in paragraph I above, the accused NOAA Corps officer's right to discovery shall be limited to what may be informally arranged and mutually agreed to by the accused NOAA Corps officer, or his/her counsel, and the NOAA Corps' Advocate.
- J. The accused NOAA Corps officer may submit a request for postponement for good cause to the Chair of the DB. It shall reside entirely within the discretion of the Chair whether to grant such a request for postponement. Such requests must be made at least 10 days in advance of the scheduled hearing. A failure to respond to a request for postponement made within 10 days of the scheduled hearing shall be deemed a denial of the request. It is the accused NOAA Corps officer's responsibility to ensure that any request for postponement is received on time. The use of facsimile, conference calls, and other available communications is encouraged to ensure timely requests and actions.

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After the Disciplinary Board is in session, requests for postponement will not be allowed, but requests for continuance may be directed to the Chair of the DB who shall have the sole authority to rule upon them.

- K. Before final action by the Director, the accused NOAA Corps officer, or his/her Counsel, shall be provided with a copy of the record of the DB's proceedings, including the DB's report (see NCD 07309D). The accused NOAA Corps officer may file exceptions to the record and/or request mitigation of the DB's recommendations. Any exception to the record or requests for mitigation must be made in writing to the Director and presented within two weeks of the accused NOAA Corps officer's receipt of the DB's record. This two-week time limit may be extended by the Director upon a showing of good cause in a written request by the accused NOAA Corps officer or his/her counsel. The Director must receive a request for extension within ten days of the accused NOAA Corps officer's receipt of the DB's record.
- L. The accused NOAA Corps officer's failure to invoke any of these rights shall not be considered a bar to the DB's proceedings, findings, opinions, or recommendations.

**07308 CONDUCT OF THE HEARING**

- A. The hearing will be conducted subject to the procedural rulings of the Chair of the DB. The accused NOAA Corps officer, insofar as practicable, will be provided an opportunity to make a full and fair presentation of his/her case. The DB will not be limited by formal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality. Oral and written matter that would be inadmissible in a court of law will not necessarily be rejected. The Chair of the DB shall rule upon all questions pertaining to such matters as continuances, adjournments, recesses, acceptability of offered evidence, and the propriety of any argument, statement, or question of the NOAA Corps' Advocate, the accused NOAA Corps officer, or his/her counsel.
- B. The DB may consider a case before it, in accordance with these directives, despite the absence of the accused NOAA Corps officer or his/her counsel if:
  - (1) the accused NOAA Corps officer, after being properly notified, fails to appear at the time and place set for the proceedings;
  - (2) the accused NOAA Corps officer's commission is being terminated because of absence without leave for 30 or more consecutive days; or
- C. For order of the DB proceedings see Appendix 7.6.
- D. All testimony before the DB will be given under oath or affirmation except as provided in NCD 07307F. Except for an accused NOAA Corps officer who elects to make an unsworn statement, each witness will be subject to cross examination and to redirect

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examination unless the right to conduct either is waived. Further examination will ordinarily be allowed only upon a showing that it is in the interests of justice. The DB may itself conduct such examination of any witness, as it deems appropriate. In the event that any party seeks to impeach or impugn the credibility of a witness other than through cross-examination, that witness may be recalled for the purpose of rehabilitating his/her prior testimony.

- E. The DB shall make and maintain a verbatim and detailed transcript of its proceedings.
- F. The NOAA Corps' Advocate shall bear the burden of proving the accused NOAA Corps officer's misconduct by a preponderance of the evidence.

**07309 DISCIPLINARY BOARD FINDINGS AND RECOMMENDATIONS**

- A. DB deliberations and voting will be conducted in closed session at which only DB members and designated support personnel will be permitted to be present. The DB may issue its report as described in NCD 07309B upon concluding its deliberations. However, the DB may elect to delay issuance of its report for up to two weeks to allow for further consideration of the record by the DB members. The findings and recommendations of the DB shall be by majority vote, and the report shall be signed by all DB members.
- B. The report of the DB shall include the following:
  - (1) a summary of the accused NOAA Corps officer's service and background;
  - (2) a summary of the acts or omissions ascribed to the accused NOAA Corps officer;
  - (3) a summary of the position taken by the accused NOAA Corps officer with respect to the charges, specifications, or allegations against the accused NOAA Corps officer, and reports or other circumstances in question; and
  - (4) a separate finding must be made for each charge and specification indicating whether it is proved by a preponderance of the evidence. Where the DB finds that misconduct did in fact occur, it may recommend any of the penalties prescribed in these directives.
- C. Any DB member(s) not concurring with the majority may sign and submit a separate minority report(s), setting forth the extent of his/her concurrence and non-concurrence, the reasons, and the variant findings, opinions, or recommendations, as appropriate. Each minority report submitted shall be attached to the DB report and shall be considered by the Director in reviewing the record.

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- D. When the DB has completed its deliberations a record of the proceedings shall be prepared. The record shall include the DB's report, minority report(s), any other evidence accepted by the DB, and the transcript of the proceedings. The record so prepared shall be certified by the chair as being true and complete.

**07310 ACTION UPON DISCIPLINARY BOARD FINDINGS AND RECOMMENDATIONS**

- A. Upon a DB's finding that the NOAA Corps' Advocate has failed to sustain the burden of proof as to charges of misconduct, a copy of the record of the proceedings of the DB shall be provided to the Director, and to the accused NOAA Corps officer or his/her counsel, documenting a finding of exoneration. Upon approval of the finding by the Director, no further action shall be taken, and any record of the incident and/or DB proceedings shall be expunged from the exonerated NOAA Corps officer's OPF.
- B. Upon a DB's finding that any of the charges of misconduct have been proven by a preponderance of the evidence, the record of the proceedings of the DB, including its report, shall be transmitted to the Director, and to the guilty NOAA Corps officer or his/her counsel. The guilty NOAA Corps officer, as provided for in NCD 07307L, has the right to file exceptions to the record and/or request mitigation of the DB's recommendations. The Director may:
- (1) order further proceedings before the DB on any charge(s) or issue(s) he/she deems appropriate;
  - (2) may approve and adopt the DB's findings and direct implementation of its recommendations in whole or in part; and/or may
  - (3) order punishment or a grant of clemency or other disposition not inconsistent with the provisions of these directives. In no event shall the action taken be of greater severity than that which has been recommended by the DB. Upon adopting a DB recommendation that the guilty NOAA Corps officer's commission may be terminated, the Director may approve the characterization of the service recommended by the DB, or one more favorable, but shall not approve a characterization of service less favorable than that recommended by the DB.

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**07401 GENERAL**

- A. This section describes offenses for which NOAA Corps officers may be subject to disciplinary proceedings. These offenses may be dealt with using either an informal or formal proceeding. For a proven offense, Rating supervisors, aircraft commander, commanding officers, or center commanding officers should consider the factors provided in NCD 07401B when choosing an appropriate disciplinary measure when an offense is proven by the evidence.
- B. The factors that should be considered when determining the appropriate penalty to be assessed for an offense include, but are not limited to, the following:
- (1) the nature and seriousness of the offense, and its relation to the NOAA Corps officer's duties, position, and responsibilities, including whether the offense was intentional, inadvertent, committed maliciously or for gain, or was frequently repeated;
  - (2) the NOAA Corps officer's rank, experience, and billet, including supervisory role, contacts with the public, and prominence of the billet;
  - (3) the NOAA Corps officer's past disciplinary record;
  - (4) the NOAA Corps officer's past performance record;
  - (5) the effect of the offense upon the NOAA Corps officer's ability to perform at a satisfactory level and its effect upon confidence in the NOAA Corps officer's ability to perform assigned duties;
  - (6) to the extent that information is available, the consistency of the penalty with those imposed upon other NOAA Corps officers for the same or similar offenses;
  - (7) the notoriety of the offense or its impact upon the reputation of the NOAA Corps or the agency;
  - (8) the clarity with which the NOAA Corps officer was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question (knowledge of the Standards of Ethical Conduct for Employees of the Executive Branch, DOC's Employee Responsibility and Conduct, and NOAA Corps Directives is presumed, absent unusual circumstances);
  - (9) the potential for the NOAA Corps officer's rehabilitation;
  - (10) the mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
  - (11) the adequacy and effectiveness of alternative sanctions to deter the NOAA Corps

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officer or others from such conduct in the future.

**07402 CONDUCT UNBECOMING AN OFFICER**

- A. Not every act of misconduct constitutes conduct unbecoming an officer. In order for misconduct to be actionable, it must be an offense against law, justice, morality, or decorum that disgraces an officer individually and brings dishonor or disrepute upon the nation, DOC, NOAA, or the NOAA Corps. It includes action in an official capacity that seriously compromises the officer's character as a gentleman/woman, or action in an unofficial capacity that seriously compromises the individual's standing as an officer. Examples of such conduct include:
- (1) committing or attempting to commit a crime involving moral turpitude;
  - (2) making false official statements;
  - (3) improper use of controlled substances;
  - (4) sexual harassment;
  - (5) undue fraternization;
  - (6) drunkenness;
  - (7) disorderly conduct;
  - (8) disorderly language.
- B. The penalty for conduct unbecoming a NOAA Corps officer is dismissal, or one of the lesser disciplinary measures prescribed.

**07403 DISOBEDIENCE OF OR REFUSAL TO OBEY A LAWFUL ORDER**

- A. Disobedience of or refusal to obey a lawful order involves an intentional act of noncompliance to a lawful order. For an order to have been disobeyed or refused, it must first have been directed personally to the offender, either orally or in writing, by competent authority, or it may have been in the form of a general order or regulation issued by competent authority that applies to a group of persons. Personal orders directed specifically to a NOAA Corps officer must be positive commands. Whether a personal order was intended as a command or mere advice shall be determined by the circumstances surrounding the event. Knowledge of general orders or directives is presumed if they have been properly promulgated. In general, all orders and directives

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are presumed to be lawful except when the order issued is outside the realm of the superior's authority. Immediate compliance is required with any order that does not explicitly or implicitly indicate that delayed compliance is authorized or directed.

- B. The penalty for disobedience of or refusal to obey a lawful order is dismissal, or one of the lesser disciplinary measures prescribed.

**07404 FAILURE IN THE PERFORMANCE OF OR NEGLIGENCE OF DUTY**

- A. This offense involves either willful nonperformance of duty or nonperformance of duties by failure to exercise ordinary care. Ordinary care is considered care that a reasonable and prudent NOAA Corps officer would have used in like circumstances. A duty may arise as a result of a law, order, regulation, or custom. Once a duty has been established, the omission to do something that a NOAA Corps officer of ordinary prudence, in the same situation and with equal experience, would not have omitted or the doing of something that a reasonable and prudent NOAA Corps officer would not do, can result in a chargeable offense. For purposes of this regulation "prudence" refers to careful precautions, attentiveness, and good judgment as applied to action or conduct and "reasonable" refers to proper and appropriate under the circumstance.
- B. The penalty for a first offense of failure in the performance of or neglect of duty is reduction in pay grade, or one of the lesser disciplinary measures prescribed.
- C. The penalty for a second offense of failure in the performance of or neglect of duty is dismissal, or one of the lesser disciplinary measures prescribed.

**07405 UNAUTHORIZED ABSENCE FROM DUTY**

- A. NOAA Corps officers who remain away from their posts of duty without authority shall be subject to disciplinary action based on the facts and circumstances in each case.
- B. In the event a NOAA Corps officer is absent without leave, is unaccounted for, or presents an unacceptable excuse if absent more than 24 consecutive hours over approved leave, the person under whose direction the NOAA Corps officer is serving shall submit to the appropriate authority, as soon as practicable, a full report of the facts in the case with a recommendation as to the action to be taken.
- C. A NOAA Corps officer who is absent without leave for more than 72 hours shall be considered in an Absent Without Official Leave (AWOL) status and, if upon returning to duty presents an unacceptable excuse, shall be subject to disciplinary proceedings.
- D. Any NOAA Corps officer who is absent from the post of duty, without authority and with the intention of not returning to duty, shall be regarded as a deserter. Any period of unauthorized absence of ten days or longer, regardless of intent, shall be regarded as

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desertion unless the absence is due to circumstances beyond the NOAA Corps officer's control, and the NOAA Corps officer concerned so informs the immediate superior within three days after the absence began (or as soon as possible if the NOAA Corps officer is incapable or cannot reasonably make such a report) and announces his/her intention to return to duty at the earliest possible time.

- E. A NOAA Corps officer returning to duty from an unauthorized absence shall be placed in a leave without pay status for the entire period he/she was absent from duty.
- F. For purposes of this regulation, a NOAA Corps officer charged as being AWOL will not be charged with disobedience to a lawful order for the same occurrence.
- G. The penalty for a first offense of unauthorized absence from duty is suspension from duty at reduced pay, or one of the lesser disciplinary measures prescribed.
- H. The penalty for a second offense of unauthorized absence from duty is dismissal, or one of the lesser disciplinary measures prescribed.

**07406 FRATERNIZATION****A. Policy**

Fraternization commonly refers to personal relationships that contravene the customary bounds of acceptable workplace relationships. Although it is most often applied to officer-enlisted relationships, fraternization also includes improper relationships between officer members as well as between officers and civilians. Fraternization is a detriment to good order and discipline resulting from the erosion of respect for authority inherent in unduly familiar relationships between coworkers of any rank or gender, and shall be prohibited.

**B. Prohibited Relationships****1. Seniors and Subordinates:**

- a. Fraternization between seniors and subordinates over whom they have authority is prohibited. All personnel serving aboard a NOAA Ship are considered to be under the authority of the Commanding and Executive Officers. All personnel serving on a NOAA Aircraft are considered to be under the authority of the Aircraft Commander and/or Copilot.
- b. Relationships between seniors and subordinates over whom they do not have authority may not be inherently improper, but may still create actual or perceived partiality or unfairness. As such, the surrounding circumstances must be examined by a supervisor within the chain of command in deciding if there has been some demonstrable adverse impact on good order and discipline within the command.

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2. Other relationships:
  - a. Relationships between NOAA Corps officers of the same or different grade, or between NOAA Corps officers and civilian employees, that involve or give the appearance of partiality, preferential treatment, or the improper use of rank or position for personal gain, are prejudicial to good order, discipline, and high unit morale, and are prohibited.
3. This section contains a non-exhaustive description of prohibited relationships. It is impossible to set forth every act or relationship which may constitute fraternization. Therefore, supervisors in the chain of command shall be responsible for determining whether a relationship constitutes fraternization based on the circumstances of a particular situation. Aircraft commanders, commanding officers, center commanding officers and/or supervisors will counsel and/or take appropriate disciplinary action if any relationship:
  - a. Causes actual or perceived partiality or unfairness;
  - b. Involves the improper use of rank or position for personal gain; or
  - c. Can otherwise reasonably be expected to undermine discipline, authority, or morale.
4. Gender of the parties: This policy is gender-neutral; a relationship may be considered fraternization regardless of the gender of the parties involved.

**C. Responsibility**

The responsibility for preventing fraternization rests primarily on the senior officer(s) within the chain of command. Nevertheless, while the senior officer is expected to control and preclude the development of inappropriate relationships, this policy is applicable to all officers as they are accountable for their own conduct.

Senior officers throughout the chain of command shall:

1. Ensure all members of the command are aware of the policies herein;
2. Provide general guidance on inappropriate relationships, as circumstances are important in determining whether personal relationships constitute fraternization;
3. Be especially attentive to their personal associations to ensure that their actions and the actions of their subordinates are supportive of good order and discipline;
4. Address any inappropriate conduct as set forth in Section D, below.

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- D. Penalties
1. Where a relationship is determined to constitute fraternization, the penalty is dismissal, or one of the lesser disciplinary measures prescribed.
  2. Conduct which constitutes fraternization is not excused or mitigated by a subsequent marriage between the parties involved.

**07407 CONSPIRACY**

- A. A NOAA Corps officer who conspires with any other person to commit an offense punishable under these directives shall, if one or more of the conspirators acts to effect the object of the conspiracy, be punished as applicable by these directives. Conspiracy and the substantive offense which is the object of the conspiracy are separately punishable.
- B. The penalty for conspiracy is dismissal, or one of the lesser disciplinary measures prescribed.

**07408 VIOLATION OF DIRECTIVES**

- A. NOAA Corps officers are required to comply with applicable directives promulgated by DOC, NOAA, and the NOAA Corps. Knowledge of these directives is presumed, therefore, all NOAA Corps officers should familiarize themselves with these documents. Violations of directives primarily administrative in nature should be dealt with using corrective measures rather than disciplinary action. Violations of directives concerning misconduct or serious violations of administrative directives may be dealt with using disciplinary action. A violation of a regulation for which a penalty has not been prescribed may be prosecuted under this section and a penalty appropriate to the offense shall be determined by the official or board administering discipline, provided the penalty is within the delegated authority of the administering official. In determining such penalties due notice will be taken of any penalties prescribed for such offenses in statute, or in DOC, NOAA, or NOAA Corps Directives.
- B. The penalty for violation of directives is dismissal, or one of the lesser disciplinary measures prescribed.

**07409 SUSPENSION FROM DUTY AT REDUCED PAY**

- A. A NOAA Corps officer shall not be suspended from duty at reduced pay without the approval of the Director, following formal disciplinary proceedings.
- B. Leave shall not accrue during any period of suspension for disciplinary reasons that is in excess of three days.

**Part 4 – Offenses and Penalties****07410 REDUCTION IN LINEAL RANK OR PAY GRADE**

- A. A NOAA Corps officer shall not be reduced in lineal rank or pay grade pursuant to this chapter without a recommendation for such action by a DB convened by, and final action approved by, the Director. All reduction procedures shall be conducted in accordance with the applicable provisions of these directives.
- B. When a DB recommends that a NOAA Corps officer be reduced in lineal rank, a specific recommendation must also be made with regard to the NOAA Corps officer's position on the lineal list.
- C. Where the DB recommends that a NOAA Corps officer be reduced in pay grade, a specific recommendation must also be made with regard to promotion credit and seniority in the grade to which reduced (i.e., adjusted position on the lineal list).

**07411 SEPARATION BY INVOLUNTARY DISCHARGE**

- A. A NOAA Corps officer shall not be dismissed from the NOAA Corps pursuant to this chapter without a recommendation for such action by a DB convened by, and final action approved by, the Director.
- B. When a DB recommends separation; a further recommendation must also be made regarding the character of the NOAA Corps officer's service according to the following guidelines:
  - (1) Characterization as "honorable" is appropriate when the quality of the NOAA Corps officer's service generally has met the standards of acceptable conduct and performance. This characterization is generally inappropriate when the commission is being terminated for reasons of misconduct, unless the NOAA Corps officer's prior overall record is so meritorious as to clearly render any other characterization inappropriate.
  - 2) Characterization of service as "under honorable conditions" is appropriate where the service was honest and faithful but significant negative aspects of the NOAA Corps officer's conduct or duty performance outweigh positive aspects of the NOAA Corps officer's record.
  - (3) Characterization of service as "under other than honorable conditions" is generally appropriate where there has been significant departure from the conduct expected of NOAA Corps officers or where the misconduct was of such severity as to warrant any other characterizations inappropriate. Examples of factors that may warrant such a characterization of service include the use of force or violence to produce serious bodily injury or death, acts or omissions that endanger the security of the United States, acts or omissions that seriously endanger the health and safety of other persons, or being AWOL in excess of 30 days.