



# **Punitive Discharged With Retirement Pay - Windfall for the Accused or Justice for All: Wright Flyer Paper No. 3**

*Maj Christopher C Lozo*

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When retirement-eligible military members are courtmartialed for any offense and are punitively discharged, by operation of law they forfeit retirement pay—an amount sometimes more than one million dollars. This forfeiture is a collateral consequence of receiving a punitive discharge—it is not a specific punishment imposed by the court-martial sentencing authority or by the convening authority who approved the courtmartial's action. In some cases the loss of retirement pay is appropriate and reasonable; in other cases it is harsh and inappropriately severe. My thesis is that the court-martial members and the convening authority, not the operation of law, should deprive a member of retirement pay. This paper explores the implications of a new punishment, Punitive Discharge with Retirement Pay (PD&R). The PD&R would be a new punishment authorized at the trial of a retirement-eligible military member. The court members would be instructed that if they sentence the accused to a PD&R, the accused would be punitively discharged from service with the loss of all military benefits except retirement pay. The members would also be instructed that they are free to adjudge a traditional punitive discharge that carries with it the loss of retirement pay. Thus, the sentence adjudged would directly take into account whether the accused should be required to forfeit retirement pay as an aspect of the punishment, rather than leaving the determination to the collateral operation of law. It is my contention that the adoption of the PD&R as a punishment option would be consistent with the maintenance and preservation of good order and discipline in the armed forces, as well as serve the ends of justice. I analyze both the current military justice system and the current retirement system and what impact the PD&R would have on both systems if adopted. I use the notion of maintenance and preservation of good order and discipline in the armed forces as the litmus test of acceptability of the PD&R. In other words, if the PD&R had either a positive or neutral effect on good order and discipline and a positive or neutral effect on military retirement, it should be adopted. I conclude that the PD&R would have a beneficial effect on the maintenance and preservation of good order and discipline and a neutral effect on military retirement. Because the PD&R would enhance good order and discipline, I also conclude that it should be adopted. I note that the military retirement system is a statutory system and would require congressional legislation to enact the PD&R, and the changes to the Manual for Courts-Martial United States would require an executive order to implement. The proper administration of military justice requires a delicate balance between the needs of good order and discipline and the needs and rights of the accused. The PD&R discharge would enable the system to make finer distinctions in the sentencing process, thus enhancing justice and fairness in the armed forces.

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