



MILITARY JUSTICE QUICK GUIDE

THE BASICS

WHAT IS AN ARRAIGNMENT?

An arraignment is a formal court hearing where the charges are read to the accused by the trial counsel, unless the reading is waived by the accused. The accused is then asked to enter pleas to the charges and plead guilty or not guilty to the charges referred against him/her, or preserve the option and reserve pleas for a later date.

WHAT IS A SUMMARY COURT-MARTIAL?

A summary court-martial is a disciplinary proceeding meant to adjudicate minor offenses with a simple procedure.

- A summary court-martial is not considered a "criminal prosecution" within the meaning of the 6th Amendment.
 - The accused will generally be permitted to retain a civilian defense attorney unless military exigencies prevent it.
 - The summary court-martial will be composed of a single commissioned officer. The government will not be represented by a prosecutor.
 - A summary court-martial is not permitted if the accused objects to that forum
 - Maximum punishments for E-4 and below: reduction to E-1, forfeiture of 2/3 pay for one month, and either 60 days of restriction, 45 days of hard labor without confinement, or 30 days confinement.
 - Maximum punishments for E-5 and above: reduction of one grade, forfeiture of 2/3 pay for one month, and 60 days of restriction.
 - Officers cannot be tried at a summary court-martial.
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WHAT IS A SPECIAL COURT-MARTIAL?

A special court-martial is a federal criminal trial composed of a military judge and at least three jury members (although the accused can also choose to be tried by judge alone).

A conviction at a special court-martial is akin to a misdemeanor conviction in a civilian criminal court. The maximum punishment that can be adjudged is confinement for 12 months, forfeiture of two-thirds pay per month for 12 months, reduction in rank, and a bad conduct discharge.

The accused has the right to be represented by an appointed military defense counsel. The accused also has the right to retain a civilian counsel at no cost to the government.

WHAT IS A GENERAL COURT-MARTIAL?

A military court with the power to try all offenses punishable under the UCMJ. It is composed of not less than five members or, per the request of the accused, by a military judge alone. It is reserved for more serious crimes, those substantially similar to felonies in civilian jurisdictions. Again, the accused has the right to be represented by an appointed military defense counsel. The accused also has the right to retain a civilian counsel at no cost to the government.

HOW CAN I GET A COPY OF THE RECORD OF TRIAL OR ANY RELATED DOCUMENTS?

The Office of the Judge Advocate General, Military Justice Administration (Code 40), processes Freedom of Information Act (FOIA) requests concerning the military justice system and individual courts-martial and responds to requests for records of trial. Once the record of trial is complete, a request can be made to the Office of the Judge Advocate General, Code 40 at FOIAMILJUS@navy.mil or (202) 685-7064.

THE BASICS

WHAT IS A CONVENING AUTHORITY?

An officer who has authority to convene a court-martial. A Convening Authority (CA) is the commanding officer empowered by the UCMJ to review evidence and refer charges to a court he or she (or a predecessor in command) has convened if the CA believes trial by court-martial is warranted. Upon receipt of preferred charges, the CA may refer the charges for trial by summary, special or general court-martial (if a GCMCA) or make other appropriate recommendations. The CA also assigns court members (jurors) based on their age, education, training, experience, length of service and judicial temperament. If an enlisted service member requests enlisted members on the panel, at least one-third of the members will be enlisted personnel.

WHAT IS AN ARTICLE 32 HEARING?

An Article 32, or preliminary hearing, is a legal procedure under the Uniform Code of Military Justice designed to determine if there is sufficient evidence to merit a court-martial. It is required before a case can be tried before a general court-martial. It requires a determination that there is probable cause that an offense has been committed and that the charges and specifications alleged are correct before they may be referred to a general court-martial (the most serious level of court-martial). However, the accused may waive the Article 32 preliminary hearing requirement.

Following the Article 32 preliminary hearing, a report from the preliminary hearing officer will be forwarded to a general court-martial convening authority who may refer the case to a general court-martial, refer the charges to a special court-martial, dismiss the charges, or take any other action deemed appropriate.

WHAT ARE THE CONDITIONS UNDER WHICH A MILITARY MEMBER CAN BE HELD IN PRETRIAL CONFINEMENT?

There must be probable cause to believe an individual has committed an offense under the UCMJ, it is foreseeable the individual would flee or commit serious criminal misconduct, and that lesser forms of restraint (e.g., restriction) are inadequate.

WHAT IS THE DIFFERENCE BETWEEN RESTRICTION AND CONFINEMENT?

Restriction is a lesser form of restraint than confinement, and may be awarded at nonjudicial punishment or court-martial. An accused may also be placed on restriction while awaiting trial by court-martial. Restriction is imposed upon a person by oral or written orders and limits him to specified areas of a military command. Restriction is normally defined for the person by a Restriction Order that states the length, limits and terms of the restriction.

Confinement is the most severe form of restraint, and may be imposed only as pretrial confinement or as part of a sentence awarded by a court-martial. Confinement is normally served in a military confinement facility.

MILITARY JUSTICE TERMS

ARREST

Moral restraint imposed on a person by oral or written orders of competent authority limiting the person's personal liberty pending disposition of charges.

ARREST IN QUARTERS

Moral restraint limiting an officer's liberty, imposed as a nonjudicial punishment by a flag or general officer in command.

ARTICLE 39A SESSION

A session of a court-martial without the members (jurors) of the court present. Article 39a sessions are called by the military judge: (1) in cases in which the accused has elected to be tried by military judge alone; (2) before the members are seated; or (3) during trial with members to dispose of matters appropriately addressed outside the hearing of the members.

BAD CONDUCT DISCHARGE

One of two types of punitive discharges that may be imposed on an enlisted person. Less severe than a Dishonorable Discharge. May be imposed on an enlisted member in a Special or General Court-Martial.

MILITARY JUDGE ALONE TRIAL

TA trial in which the military judge alone hears the evidence, determines guilt and imposes a sentence. An accused may elect trial by military judge alone rather than by a court composed of members. specification(s) to the accused (unless the accused waives the reading), coupled with the request that the accused enter pleas (guilty or not guilty). The accused may reserve pleas.

CHALLENGE

Formal objection to a member of the court or the military judge being allowed to continue to sit on a court-martial. There are two types, for cause and peremptory. Challenges for cause are based on a fact or circumstance (such as conflict of interest) which has the effect of disqualifying the person challenged. A peremptory challenge is where each side is allowed to challenge one member (but not the military judge) and is not required to give any reason at all.

CHARGE

A formal statement identifying the Article of the UCMJ which an accused is alleged to have violated.

SPECIFICATION

A description in writing of the offense which an accused is alleged to have committed. Each specification, together with the charge under which it is alleged, constitutes a separate accusation.

MILITARY JUSTICE TERMS

CONVENING ORDER

The document by which a court-martial is created. It specifies the type of court, the names of the members, the authority by which the court-martial is created, and may designate where the court will meet.

COURT-MARTIAL

A military proceeding composed of one or more members of the armed forces (the number depending on the type of court), the functions of which are to decide whether a person subject to military law has committed a violation of the Uniform Code of Military Justice and, if it finds him guilty, to adjudge punishment for the offense.

DERELICTION OF DUTY

Willfully or negligently failing to perform assigned duties or performing them in a culpably inefficient manner.

DISHONORABLE DISCHARGE

The most severe punitive discharge that may be awarded to an enlisted member. It is reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses requiring severe punishment.

DISMISSAL

The punitive discharge imposed on midshipmen, cadets, officers and warrant officers. Like the dishonorable discharge, it is reserved for individuals who should be separated under conditions of dishonor.

DISRESPECT

Acts or language that detracts from the respect due the authority and person of a superior commissioned officer.

ELEMENTS

The essential ingredients of an offense which are to be proven at the trial; the acts or omissions which form the basis of any particular offense.

MATTER IN AGGRAVATION

Evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which an accused has been found guilty.

MATTER IN EXTENUATION

Any circumstance serving to explain the commission of the offense; including the reasons for committing the offense that do not constitute a legal justification or excuse.

NEGLIGENCE

The failure to exercise due care, i.e. that care that a reasonable person would demonstrate under the same or similar circumstances.

PREFERRAL OF CHARGES

The formal procedure for making an accusation against an accused. The accuser signs and swears to the charges and specifications.

MILITARY JUSTICE TERMS

PRETRIAL AGREEMENT

An agreement between the accused and the CA, usually to limit the amount of punishment that can be imposed in a court-martial in return for a plea of guilty to some or all of the charges. Other conditions are sometimes agreed to by the accused and the CA. The agreement is often called a "PTA."

PUNITIVE ARTICLES

Articles 77 through 134 of the UCMJ (codified at 10 U.S.C. §877-934). These articles describe various crimes and state the maximum punishment for each.

REFERRAL OF CHARGES

The action of the CA in directing that a particular case be tried by a particular type of court-martial.

SENIOR MEMBER

The senior-ranking member of a court-martial panel. He is also referred to as the "President" of the court-martial. This officer announces the findings and sentence of the members in a fashion similar to that of the foreman on a civilian jury. The President has no judicial authority in the court-martial and no member of a court-martial panel, including the President of the court, may use rank or position to influence deliberations.

SET ASIDE

Action by proper authority voiding all or part of the proceedings of a court-martial

SUSPENSION

Action by proper authority to withhold the execution of a punishment for a probationary period.

MANUAL FOR COURTS-MARTIAL

Often referred to as the "MCM," this compilation includes the Rules for Courts-Martial, the Military Rules of Evidence, the punitive articles as well as the Uniform Code of Military Justice.

UNIFORM CODE OF MILITARY JUSTICE

Often referred to as the "UCMJ," this comprehensive statute (10 U.S.C.A. §801-946) forms the basis for military criminal law. It contains the requirements for jurisdiction, trial procedure, sentencing and NJP. It also contains punitive articles, which set forth acts that are crimes under military law. This statute is implemented by Executive Order, in the form of the Manual for Courts-Martial.
