

The Court-Martial System

PROCEDURE

Justice is the goal of the court-martial system. As in all American criminal courts, courts-martial are adversary proceedings. That is, lawyers representing the government and the accused present the facts, legal aspects, and arguments most favorable to each side. In doing so, they follow the rules of procedure and evidence. Based upon these presentations, the judge decides questions of law. The court-martial members apply the law and decide questions of fact. Only a court-martial can determine innocence or guilt. General and special court-martial convictions are equivalent to federal court convictions.

At a court-martial, the trial counsel represents the government, and the defense counsel represents the accused. Each counsel is duty-bound to do everything possible within the law to represent the client's interests. Our country's policy is to ensure that each soldier charged with a crime has an opportunity to present the best possible defense. This system allows all issues to be brought before the court so that it may make a just decision.

Determination Of Criminal Conduct

A crime is an act for which the law provides a penalty. Violations of Army regulations, state and federal laws, and the orders of superiors may constitute criminal conduct punishable under the UCMJ. You can resolve any question of what constitutes criminal conduct under the UCMJ by calling your staff judge advocate or trial counsel. A soldier's conduct may be substandard or personally offensive without being criminal.

Relations With Staff Judge Advocates

Staff judge advocates are lawyers for their commands. Their responsibility is to administer criminal justice and advise court-martial convening authorities. Staff judge advocates provide professional guidance and assist ante in criminal cases at all levels. The two types of court-martial counsel are trial counsel and defense counsel.

TRIAL COUNSEL

The trial counsel is the prosecutor, a key individual in the court-martial process. The trial counsel is responsible for witnesses, documents, and all the other arrangements related to the trial. Your establishment of a good relationship with the trial counsel early in a case can prevent unnecessary delay. Your cooperation is essential to the complete presentation of the government's case.

DEFENSE COUNSEL

The defense counsel, generally assigned to the Trial Defense Service, is also a key individual in the court-martial process. The defense counsel is the accused's representative and acts solely on the behalf of the accused. The defense counsel is required by law and ethics to present the best defense possible. This includes determining the facts and sometimes recommending rehabilitation for a soldier,

TYPES OF COURTS-MARTIAL

The court-martial system consists of three types of courts-martial: **a summary court-martial, a special court-martial, and a general court-martial.**

Summary Court-Martial

A summary court-martial (SCM) is a court composed of one officer who may or may not be a lawyer. (See MCM, Chapter XIII, R.C.M. 1301-1306.) The SCM handles minor crimes and has simple procedures. The maximum punishment, which depends upon the rank of the accused, is limited to confinement for one month, forfeiture of two-thirds pay for one month, and reduction in grade. (See MCM, R.C.M. 1301(d) for allowable punishments.) An SCM may not try an accused against his will. If he objects, you may consider trial by a higher court-martial. The accused does not have the right to military counsel at an SCM.

Special Court-Martial

A special court-martial (SPCM) consists of a military judge, at least three court members (unless the accused chooses to be tried by a military judge alone), a trial counsel, and a defense counsel. The maximum sentence is

confinement for six months, forfeiture of two-thirds pay per month for six months, and reduction to the lowest enlisted grade. (See MCM, R.C.M. 201(f)(2)(B).)

The SPCM convening authority may authorize the SPCM to adjudge a bad-conduct discharge (BCD) as part of its maximum sentence. This proceeding is known as a BCD SPCM. It differs from an ordinary SPCM in that a verbatim court reporter is required. If a BCD is adjudged, a verbatim record of trial is required, and the accused has a right to an automatic appeal to the Army Court of Military Review.

General Court-Martial

A general court-martial (GCM) tries the most serious offenses. It consists of a military judge, at least five members (unless the accused elects to be tried by a military judge alone), a trial counsel, and a defense counsel; the counsel must be lawyers. Unless waived by the accused, a formal investigation must occur before a general court-martial may try the case. (See UCMJ, Article 32.) The GCM may adjudge the most severe sentences authorized by law, including dishonorable discharge. (See MCM, Part IV and Appendix 12.) In both GCMs and SPCMs, an enlisted accused may request that at least one-third of the court be enlisted soldiers.

DISPOSITION

You may not understand why a court imposes a particular sentence. A court may hear evidence not known to you, or information available to you may not be presented or admissible at trial. The court-martial is responsible for setting the sentence. The members determine a sentence based on evidence, and it must best serve the—

- Ends of good order and discipline in the military.
- Needs of the accused.
- Welfare of society.

With these goals in mind, become familiar with the background of the offense and the offender in determining the disposition of the case.

A minor offense does not merit severe punishment and may often be best handled by the commander under the provisions of UCMJ, Article 15, or by administrative means. A more serious offense may warrant a court-martial. You must consider all factors of the offense.

The performance of an accused in the civilian and military communities often shows his character and potential for rehabilitation. You should generally treat a first-time offender more leniently than you would a repeat offender. If you talk to his supervisors and review his personnel records, you may be better able to decide what action will most benefit him and the Army. For example, if you consider the offense to be serious but do not believe the accused should be punitively discharged, you may recommend trial by a court-martial with no authorization to impose a punitive discharge.

REVIEW AND APPEAL

The convening authority must review and approve each court-martial conviction. The convening authority may disapprove the finding of guilty or reduce the sentence. After the convening authority's action, the next step depends on the sentence. If the soldier received a punitive discharge or confinement for one year or more and has not waived appellate review, the Army Court of Military Review (ACMR) in Washington, DC, automatically reviews the case. Senior judge advocate officers sit on the ACMR. If they reject the soldier's appeal, he may further appeal the case to the United States Court of Military Appeals (CMA), also in Washington DC, which consists of five civilian judges. Finally, if CMA rules against him, the soldier may ask the United States Supreme Court to hear the case.