

Case Disposition

PRELIMINARY CONSIDERATIONS

When you have completed a preliminary investigation and believe that an offense has been committed, you must dispose of the case promptly. You may decide to take nonpunitive action, to impose nonjudicial punishment, or to prefer charges and recommend trial by court-martial.

Do not initiate charges if your preliminary investigation leads you to believe that an offense was not committed. If charges have been preferred and the investigation does not support them, do not forward them. You may discuss the situation with your battalion commander. A superior commander may order you to forward the investigation, but he may not order you to make a specific recommendation for disposition.

The armed forces have jurisdiction over every offense a soldier commits. For example, if an off-duty soldier in civilian clothes commits an offense off post, the military still has jurisdiction over the offense; jurisdiction depends solely upon the accused's status as a member of the armed forces.

PREPARATION OF CHARGES

Use DD Form 458 to prepare charges for trial by court-martial. While you are responsible for preparing the charge sheets, you have no legal requirement to do so personally. If your command has a staff judge advocate office, you should have the judge advocate supervise their preparation. If you have no SJA office, you may seek advice from—

- The battalion adjutant.
- The battalion legal specialist.
- The military justice division of the major command's SJA office.

Careful preparation of the charge sheet is critical to the prompt disposition of the case; a poor job will cause delay and an administrative overload. Consistently poor work in investigating and preparing charges may reflect adversely on you.

Once the charge and specification have been prepared and signed under oath, they are public record and should not be altered except on the advice of a judge advocate. MCM, R.C.M. 307 provides additional guidance for preparing the

charge sheet, which you must prepare with an original and four copies.

Time Limits

The prompt disposition of charges is essential to military justice. An unexplained delay in the processing of charges at any stage may cause a dismissal of charges. When a question of delay is brought up at trial, the government must justify it and show that it was not intentional and was not due to an oppressive design or neglect on the part of the Army. The government is accountable for the period beginning when the accused is placed under pretrial restraint or when he receives notice that he is being charged.

Local directives usually outline the acceptable time limits for the processing of cases. The local directives on speedy disposition of cases maybe stricter than the speedy-trial requirements of MCM, RCM 707. You should discuss any question on a possible delay with the servicing trial counsel or SJA.

Delays

To avoid unreasonable delays in the processing of court-martial charges, you should—

- Hand-carry all court-martial files to higher headquarters. Using the message center may be too slow.
- Investigate an incident immediately after it happens. Do not wait for laboratory reports or completed CID and MP reports. You can always get preliminary statements from CID agents or MP officials and may initiate action based upon those statements.
- Not allow a case to remain in the unit because of the pressure of other duties. Note the reasons for any delay in case the question is raised at trial. Call the servicing trial counsel or SJA for advice if there are any questions or doubts at any stage of the proceedings.

RECOMMENDATIONS FOR COURT-MARTIAL

Forward the charge sheet and allied papers with your recommendation for disposition to the

summary court-martial convening authority. Summary court-martial convening authorities are usually battalion commanders who have authority to act upon your recommendations. They may dismiss charges or decide to try the accused by summary court-martial. If they do not have special court-martial authority at the battalion level, they may also decide to forward a case still higher with a recommendation for trial by special court-martial. If an offense is serious enough for general court-martial, a battalion commander may, as a summary court-martial authority, direct an investigation under UCMJ, Article 32.

Although battalion commanders may not impose their will upon you regarding disposition of a case, they may accept or reject any recommendation they receive.

Finally, a battalion commander may decide that neither trial by court-martial nor nonjudicial punishment is appropriate. Instead, he may elect to dispose of the matter by administrative action as outlined in Part Two, Chapters 6 and 7.

Article 32 Investigation

Any case to be tried by general court-martial requires an investigation under UCMJ, Article 32, unless the accused waives it. Any offense you investigate and forward as charges is the basis for such an investigation. The special court-martial convening authority (SPCMCA) usually appoints an Article 32 investigating officer. The investigating officer must inquire into the truth of the matters set forth in the charges and recommend a disposition for the case. (See MCM, R.C. M. 405, for a complete discussion.) Based on the information developed in the investigation, the SPCMCA may decide to—

- Forward the case with a recommendation for trial by general court-martial.
- Refer the case to a special court-martial.
- Refer the case to a summary court-martial.

- Impose nonjudicial punishment.
- Take administrative action.
- Dismiss the charges and return the soldier to duty.

Separation In Lieu Of Court-Martial

Soldiers charged with an offense punishable by a bad-conduct discharge or dishonorable discharge may request an administrative discharge for the good of the service. A soldier's request for discharge does not preclude or suspend court-martial proceedings; only the general court-martial convening authority (GCMCA) may decide to delay the court-martial. Soldiers must have the opportunity to consult with legal counsel, and they must certify their understanding that a discharge under other-than-honorable conditions is possible.

Forward a soldier's request for discharge with a recommendation for approval or disapproval through channels to the commander exercising general court-martial jurisdiction. If he recommends approval, he will further indicate the type of discharge he recommends. The soldier normally will receive a discharge under other-than-honorable conditions, although he maybe issued an honorable or general discharge if the GCMCA considers it warranted. (See Part Two, Chapter 6 and AR 635-200, Chapter 10.)

REHABILITATION

After an accused is convicted by a court-martial, your responsibility for him continues until he is no longer a member of your unit. Convicted soldiers whose sentences include unsuspended confinement will be transferred or retained in the unit as indicated below. (See AR 190-47.)

Soldiers transferred to either the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, or to the United States Army Correctional Activity (USACA), Fort Riley, Kansas, must be sent as soon as possible.¹The

¹Transfer criteria for the USDB and the USCCA change frequently. Check with your trial counsel or local confinement facility to find out what they are.

GCMCA must approve any delay in transfer based on exceptional circumstances such as the following:

- Requirement of the accused as a witness in further judicial proceedings.
- A pending request for deferment of confinement.
- A pending clemency action such as suspension of confinement or punitive discharge.
- A pending additional criminal investigation or administrative elimination.

All officer prisoners who have any confinement remaining are eligible for transfer to the

USDB, whether or not they are sentenced to dismissal. Officer prisoners will not be transferred to the USACA. Enlisted prisoners whose sentences include more than two years of confinement are also transferred to the USDB without regard to whether a punitive discharge was adjudged.

Enlisted prisoners who have more than four months and less than two years of confinement will be transferred to the USACA without regard to whether a punitive discharge was adjudged. Enlisted soldiers whose sentences include four months or less of confinement, without regard to whether a punitive discharge was adjudged, will stay in local confinement facilities.

²See note 1.