



TRIAL DEFENSE SERVICE

FORT CARSON FIELD OFFICE
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SUMMARY COURTS-MARTIAL

1. Rights. If you are being charged at a Summary Court-Martial (SCM), you have the following rights:

a. **To consult with qualified defense counsel.** Defense counsel will explain the SCM to you, including procedures and rights available to you. The counsel will also make suggestions to you about the trial on such matters as what witnesses to call, how to cross-examine witnesses, what motions to file, how to present your case and what main points to argue to the Summary Court Officer, who serves as the judge in your case. The attorney normally can also help you prepare and file pretrial motions and make suggestions on evidence for sentencing, should your case result in sentencing. Military attorneys normally do not represent you at the Summary Court-Martial. You can, however, retain a civilian attorney at no expense to the government that can represent you at trial. Counsel will not represent the government at SCM unless you are represented by counsel and the SJA approves the government representation.

b. **Right to Object to a Summary Court-Martial.** You must voluntarily consent to trial by Summary Court-Martial. Consequently, if you refuse trial by Summary Court-Martial, your commander must then determine how to dispose of the case. Options include dismissing the entire matter, referral of the case to a higher level of court-martial, or using administrative measures, such as extra training, memorandum of reprimand or administrative separation.

c. **Right to Evidence and Witnesses.** You have the right to inspect all the evidence, including the documents that will be presented during the hearing. You also have the right to know who the witnesses are that will be called against you, the right to cross-examine these witnesses, and the right to call witnesses and produce other evidence on your behalf.

d. **Right to Plead Guilty or Not Guilty.** You have the right to plead guilty or not guilty to any or all of the offenses brought against you. If you plead guilty, you are admitting that you committed the acts you are charged with. If you plead not guilty, you are requiring that your guilt be proved beyond a reasonable doubt as to each element of that offense.

e. **Right to Testify.** You have the right to testify at your hearing. If you do, you will be placed under oath and can be cross-examined by the Summary Court Officer. You also have the right to remain silent. If you do, the Summary Court Officer cannot hold your silence against you and cannot consider this as an admission of guilt.

f. **Right to Present Evidence on Sentencing.** If the Summary Court Officer finds you guilty, then you can present matters of extenuation and mitigation on sentencing that explain why you committed the offense or why you should not be punished very severely, such as evidence of your good military record. You can also choose to make a sworn or unsworn statement on sentencing. The Summary Court Officer can question you about any sworn statement. He/She cannot question you about an unsworn statement.

2. **Procedures.** The following procedures will be used in your Summary Court-Martial:

a. **Maximum Punishment.** The maximum punishment that you can receive is as follows:

(1) E-4 and below:

- (a) reduction to the lowest pay grade;
- (b) forfeiture of two-thirds of 1 month's pay;
- (c) confinement for 1 month;
- (d) hard labor without confinement for 45 days; and
- (e) restriction for 2 months.

(2) E-5 and above:

- (a) reduction of one grade;
- (b) forfeiture of two-thirds of 1 month's pay; and
- (c) 2 months' restriction

b. **Summary Court Officer.** One commissioned officer appointed by your convening authority (the person who sent this to the Summary Court-Martial) serves as the Summary Court Officer. This officer essentially serves as your judge and jury and will determine whether you are guilty or not guilty and, if guilty, will decide on an appropriate sentence. The Summary Court Officer will obtain and examine all evidence concerning the offenses you are charged with. He will thoroughly and impartially inquire into both sides of the charges, will call and question witnesses, and will assist you in calling and cross-examining witnesses.

c. **Similarity to other Courts-Martial.** Though lawyers are usually not present, your hearing will be very similar to a more formal court-martial hearing. You can make an opening statement, listen to the evidence presented against you, challenge witnesses, and make arguments. Additionally, you do not have to say or do anything. If the Summary Court Officer finds you guilty, then you will start the sentencing proceedings where you can present evidence on your behalf. The investigating officer will then deliberate on and announce your sentence. Note that the Military Rules of Evidence are applicable at a Summary Court-Martial. Consequently, you should ask your advising attorney about any evidence issues that may be

applicable to your case and he or she can assist you with filing any pretrial evidence motions.

d. **Appeal.** If you are found guilty and sentenced, a summarized record of proceedings will be prepared and you will be provided a copy. You may then submit matters to the Summary Court-Martial Convening Authority requesting that he not approve the findings of guilty and/or that he reduce your sentence. Your attorney can assist you in reviewing the Summary Court-Martial and in deciding whether to appeal. Additionally, the attorney will advise you on your additional appellate rights, which include review by a judge advocate for legal sufficiency and possible appeal to The Judge Advocate General.

e. **Filing.** Records of the summary court-martial will be filed with the summary court-martial convening authority, MILPO, and in your AMHRR.

3. **Conclusion.** Consult with a defense attorney as soon as you are informed about a Summary Court-Martial and if you have any questions about the procedures. Though we normally do not represent you in the Summary Court-Martial hearing itself, we can assist you in preparing for court so that you can present the best possible defense.