

## SUMMARY COURT-MARTIAL INFORMATION

This information paper describes your rights if you are charged with violating the Uniform Code of Military Justice (UCMJ) and facing a Summary Court-Martial. You should become familiar with the guidance below so you know what to expect and how to respond to the charges you are facing.

### **WHAT IS A SUMMARY COURT-MARTIAL?**

The military justice system has three levels of court-martial: General, Special, and Summary. A summary court-martial is the lowest level of court-martial available. It is designed to promptly resolve minor offenses under a simple procedure. While it has lower maximum punishments than the other two types of court-martial, it also has fewer rights for the accused (that is, you, the person facing the charges).

### **WHO DECIDES MY CASE SHOULD BE A SUMMARY COURT-MARTIAL?**

Commanders at certain levels are also called Court-Martial Convening Authorities (CMCA), meaning they have the power to send a case to a court-martial. The lowest level CMCA is the Summary Court-Martial Convening Authority (SCMCA), usually the battalion commander. He/She has the power to create (convene) a summary court-martial.

### **WHO IS IN CHARGE OF THE SUMMARY COURT-MARTIAL?**

When the SCMCA sends a case to a summary court-martial, he or she also appoints a summary court-martial officer. The summary court-martial is composed of one active-duty commissioned officer, usually the rank of captain or higher. The summary court-martial officer is the person who makes the decision on guilt, and if found guilty, on the sentence. The SCMCA cannot appoint himself as the summary court-martial officer unless he is the only officer in the command.

### **WHAT IS THE MAXIMUM PUNISHMENT THAT I COULD FACE AT A SUMMARY COURT-MARTIAL?**

PUNISHMENT	E5 AND ABOVE	E4 AND BELOW
Confinement for 1 month or less.		X
Hard labor without confinement for 45 days or less.		X

Restriction for two months or less.	X	X
Forfeiture of 2/3 pay per month for one month or less.	X	X
Reduction to the lowest enlisted grade.	One grade only.	X

**BEFORE THE TRIAL, WHAT ARE MY RIGHTS UNDER A SUMMARY COURT-MARTIAL?**

You, as the accused, have the following rights before the summary court-martial:

a. *The right to consult with counsel.* While you do not have the right to be represented at the summary court-martial by a military attorney, you can consult with a military attorney (at no cost to yourself) who works for the Trial Defense Services (TDS), prior to making any election of rights under the summary court-martial. This TDS counsel will explain your rights to you and document that explanation on DA Form 5111-R. If you want to be represented by an attorney at the summary court-martial, you can have a civilian attorney represent you, at your own expense, if that attorney’s schedule does not unreasonably delay the proceedings.

b. *The right to object to trial by summary court-martial.* Because the rights provided to an accused are somewhat less than those provided under the other levels of courts-martial, an accused can object to trial by summary court-martial. If you object to trial by summary court-martial, the decision on how to proceed rests with your command. The command could send the case to a higher court-martial, refer it to nonjudicial punishment, dispose of the case administratively or dismiss it entirely. The normal response is to send the case to a higher level of court-martial. **NOTE:** Before objecting to trial by summary court-martial, we **strongly** encourage you to consult with a TDS attorney.

c. *The right to inspect all the documents and physical evidence in the case.*

d. *The right to know the charges, the name of the accuser, the name of the SCMCA and the date of referral (all stated on the charge sheet).*

e. *The right to know who will appear as Government witnesses.*

f. *The right to call witnesses and present evidence in your own behalf with the assistance of the summary court-martial officer.* If you have witnesses that you believe are important to your case, either in the findings phase or the sentencing phase, tell the summary court-martial officer before the trial so that he can assist you in making sure those witnesses are present for the summary court-martial.

g. *The right to present motions.* If you believe that you are entitled to have some of the charges dismissed for legal reasons, you can request that the summary court-martial officer do so.

h. *The right to know the maximum sentence possible in the case.* This is NOT the sentence the summary court-martial officer would give if he were to find you guilty; it is the maximum sentence that the summary court-martial officer COULD give you if he found you guilty. You do NOT have the right to have the summary court-martial officer tell you in advance what your particular punishment would be.

### **AT THE TRIAL, WHAT ARE MY RIGHTS UNDER A SUMMARY COURT-MARTIAL?**

You, as the accused, have the following rights at the summary court-martial:

- a. *The right to plead guilty or not guilty.*
- b. *The right to cross-examine Government witnesses.*
- c. *The right to testify on your own behalf, or remain silent, with the assurance that no adverse inference will be drawn by the summary court-martial officer from such silence.*
- d. *If found guilty, the right to present matters in extenuation and mitigation at the summary court-martial, to include the right to remain silent or to make a sworn or unsworn statement (orally, written, or both).* If you are found guilty at the summary court-martial, you can present evidence or witnesses to show that the offense(s) are either not as serious as they would otherwise appear, or are out of character for you as a soldier. If you make an unsworn statement, you cannot be cross-examined on that statement.

### **AFTER THE TRIAL, WHAT ARE MY RIGHTS UNDER A SUMMARY COURT-MARTIAL?**

You, as the accused, have the following rights after the summary court-martial:

- a. *The right to apply for deferment of confinement, should the summary court-martial officer find you guilty and impose confinement.* Should the summary court-martial officer give confinement as part of the sentence, you can request that the SCMCA order the confinement to start at some later time (“defer” the confinement).
- b. *The right to submit written matters in extenuation and mitigation to the SCMCA, prior to his final decision on the case.* Pursuant to R.C.M. 1105, “after a sentence is adjudged in any court-martial, the accused may submit matters to the convening authority”. The SCMCA makes the final decision to approve or disapprove the findings and sentence handed out by the summary court-martial officer. Just as you have the right to present matters to the summary court-martial officer to show that the offense(s) are either not as serious as they would otherwise appear, or are out of character for you as a soldier, you can present like matters to the SCMCA before he makes his final decision. You must submit these matters to the SCMCA within seven days after the summary court-martial officer announces the sentence. If you make a written request to extend that time, the SCMCA can grant you up to an additional twenty days.

c. *The right to appeal your summary court-martial conviction, but only in very limited circumstances.* There is normally no appeal from a summary court-martial conviction. However, if within two years of the date the SCMCA approves the summary court-martial, there is newly discovered evidence, or a question regarding: a. Fraud on the court-martial b. Lack of jurisdiction over the soldier or the offense c. Other error prejudicial to a substantial right of the accused, or d. Appropriateness of the sentence, you can request review by The Judge Advocate General of the Army.

### **WHAT ARE SOME OF THE EFFECTS OF A SUMMARY COURT-MARTIAL?**

Generally, a summary court-martial is not considered a conviction and does not carry the same loss of benefits that a conviction by a general or special court-martial would carry. For example, a finding of guilty at a summary court-martial for domestic violence does not trigger the provisions of federal law that prohibit possession of a firearm.

A summary court-martial conviction may, however, form the basis for a future administrative separation and/or bar to reenlistment.

**LEGAL Dept: PLEASE SERVE THIS  
DOCUMENT ON TDS IMMEDIATELY**

MEMORANDUM FOR TRIAL DEFENSE SERVICES, DLIFLC & POM, Bld 273, Monterey,  
CA 93944-3327, ATTN:     CPT Rob L. Smith    .

SUBJECT: Results of Trial – Summary Court-Martial – U.S. v. \_\_\_\_\_  
(Your full name)

1. I was tried by Summary Court-Martial on \_\_\_\_\_.

2. I have been convicted and sentenced to \_\_\_\_\_ and  
confinement for \_\_\_\_\_.

3. I request immediate consultation with you concerning my post-trial and appellate rights and  
submissions. Please contact me at \_\_\_\_\_.

\_\_\_\_\_  
(Your Full Name – Printed)

Date: \_\_\_\_\_

**MEMORANDUM FOR SUMMARY COURT-MARTIAL OFFICER**

SUBJECT: FORWARDING OF COPY OF RECORD OF TRIAL

1. Pursuant to Rule for Courts-Martial 1305(d)(1)(B), request that my copy of the record of trial be served upon my defense counsel, \_\_\_\_\_, at the Trial Defense Offices, DLIFLC & POM, Bld. 273, Monterey, CA 93944-3327.

\_\_\_\_\_  
(Your Full Name – Printed)

Date: \_\_\_\_\_

**MEMORANDUM THRU SUMMARY COURT-MARTIAL OFFICER  
FOR SUMMARY COURT-MARTIAL CONVENING AUTHORITY**

**SUBJECT: EXTENSION OF TIME TO SUBMIT MATTERS**

Pursuant to Rule for Courts-Martial 1105(c)(2), request that the time period for submitting matters to you pertaining to my summary court-martial be extended for an additional 20 days to permit me time to consult with and received the assistance of Trial Defense Counsel and to obtain necessary documentation/statements for such submission.

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(Your Full Name – Printed)

Date: \_\_\_\_\_