

SUMMARY COURT-MARTIAL INFORMATION

This information paper describes your rights if you are facing a Summary Court-Martial for charges of violating the Uniform Code of Military Justice (UCMJ). 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, 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 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 may, however, hire a civilian attorney to represent you at no cost to the government. While you do not have the right to be represented by a military lawyer, 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.

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 non-judicial 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, Mr. Coombs *strongly* encourages you to consult with a TDS attorney or contact him.

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.* 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?

The summary court-martial conviction cannot be used against you at a later court-martial unless a lawyer at the summary court-martial either represented you or you affirmatively waived the right to representation at the 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.

Remember, the Law Office of David E. Coombs is here to help you. If you have further questions or need to consult with a lawyer (after first speaking with TDS), do not hesitate to call us.