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JMJ

Criminal Law Division (Code 20) and JMJ June 2024

# SIDEBAR



## SUMMARY COURT-MARTIAL UPDATED GUIDANCE

This joint Sidebar includes policy updates issued by the Judge Advocate General of the Navy (JAG) pertaining to summary court-martial (SCM). JAG directed these updates in accordance with authorities granted by Article 6, UCMJ and SECNAVINST 5430.27E.

Interim Policy Guidance for immediate implementation:

- Interim Policy #1: The accused at a summary court-martial has the right to be represented by military defense counsel. Upon request, detailing authorities shall detail defense counsel to summary courts-martial.
- Interim Policy #2: Convening authorities may not serve as a summary court-martial officer in cases they convened.

Background:

The Internal Review Team (IRT) on Racial Disparities in the Investigative and Military Justice Systems was established on 3 May 2022 to examine racial disparities in these systems and

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provide actionable recommendations to address them. The Deputy Secretary of Defense approved the IRT's recommendations in December 2023.

IRT Recommendation 8 states the Department of Defense (DoD) should provide its members with the right to legal representation at SCM. To that end, the IRT recommended that DoD should direct a policy to provide a right to defense counsel at all courts-martial, to include SCM. Further, it was recommended that the DoD establish that right through pursuit of an amendment to Rule for Courts-Martial (R.C.M.) 1301(e).

IRT Recommendation 9 states that the DoD should prohibit a Commanding Officer in the accused's chain of command from serving as the SCM Officer. To achieve that objective, the IRT recommended both the establishment of policy and the amendment of the RCMs.

Permanent regulatory changes to the JAGMAN to implement IRT recommendations 8 and 9 are pending review and approval by the Secretary of the Navy. While the approvals of these changes are pending, the above interim policies apply. The interim "SCM Acknowledgement of Rights and Waiver" and "SCM Waiver of Appearance of Counsel" are attached for your use, as appropriate.

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**SUMMARY COURT-MARTIAL ACKNOWLEDGEMENT OF RIGHTS AND WAIVER**

I, [ACCUSED], assigned to [COMMAND], understand the following facts and rights regarding summary courts-martial:

1. I have the right to consult with a lawyer before deciding whether to accept trial by summary court-martial. Should I desire to consult with counsel, I understand that a military defense counsel may be made available to advise me free of charge, or in the alternative I may consult with a civilian counsel at my own expense.

2. I realize that I may refuse trial by summary court-martial, in which event the charges may be referred to a special or general court-martial. My rights at a summary court-martial would include:

a. the right to be represented at trial by a military defense counsel. I may also seek to be represented by a civilian counsel at my own expense, if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it;

b. the right to confront and cross-examine all witnesses against me;

c. the right to plead not guilty and the right to remain silent, thus placing upon the government the burden of proving my guilt beyond a reasonable doubt;

d. the right to have the summary court-martial call, or subpoena, witnesses to testify in my behalf; and

e. the right, if found guilty, to present matters which may mitigate the offense or demonstrate extenuating circumstances as to why I committed the offense.

3. I understand that the maximum punishment that may be imposed at a summary court-martial is:

On E-4 and below:

Confinement for 1 month, 45 days hard labor without confinement, or 60 days restriction;

Forfeiture of two-thirds pay for 1 month; and

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Reduction to the lowest paygrade.

On E-5 and above:

60 days restriction;

Forfeiture of two-thirds pay for 1 month; and

Reduction to the next inferior paygrade.

4. Should I refuse trial by summary court-martial, the charge(s) may be referred to trial by special or general court-martial. At a special or general court-martial, in addition to those rights set forth above with respect to a summary court-martial, I would also have the following rights:

a. The right to be represented at trial by a military lawyer, free of charge, including a military lawyer of my own selection if that lawyer is reasonably available. I would also have the right to be represented by a civilian lawyer at my own expense.

b. At a general court-martial, the right to be tried by a member panel composed of eight officers or, at my request, at least one-third of the members would be enlisted personnel. If tried by a court-martial with members, three-fourths of the members, voting by secret written ballot, would have to agree in any finding of guilty.

c. At a special court-martial not referred to a military judge alone, the right to be tried by a member panel composed of four officers or, at my request, at least one-third of the members would be enlisted personnel. If tried by a court-martial with members, three-fourths of the members, voting by secret written ballot, would have to agree in any findings of guilty.

d. At a special court-martial referred to a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, the military judge alone would determine the sentence. However, the military judge may not award a bad-conduct discharge or confinement for more than six months if the charges are referred to a special court-martial consisting of a military judge alone.

e. In either a general or special court-martial (not referred to a military judge alone), the right to request trial

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by a military judge alone. If tried by a military judge alone, the military judge alone would determine my guilt or innocence and, if found guilty, the military judge alone would determine the sentence.

5. I understand that the maximum punishment for the offense(s) presently charged against me is the following:

Special Court-Martial: - *[insert maximum punishment here]*

Special Court-Martial referred to a military judge alone:  
*[insert maximum punishment here]*

General Court-Martial - *[insert maximum punishment here]*

Knowing and understanding my rights as set forth above, I (do) (do not) desire to consult with counsel before deciding whether to accept trial by summary court-martial.

Knowing and understanding my rights as set forth above (and having first consulted with counsel), I hereby (agree) (object) to trial by summary court-martial.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of Accused)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**SUMMARY COURT-MARTIAL  
WAIVER OF THE APPEARANCE OF COUNSEL**

I have been advised by the summary court-martial officer that I cannot be tried by summary court-martial without my consent. I have also been advised that if I consent to trial by summary court-martial, I have the right to be represented by military defense counsel. I may also be represented by civilian counsel provided at my own expense if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it. It has also been explained to me that if I am represented by a lawyer (either civilian or military) at the summary court-martial, or if I affirmatively waive the right to be represented by a lawyer, a finding of guilty by the summary court-martial may be admissible as impeachment evidence under Military Rule of Evidence 609 at any subsequent court-martial. By my signature below, I hereby waive the appearance of a lawyer, military or civilian, to represent me at the summary court-martial.

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Signature of Summary Court-  
Martial

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Signature of Accused

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Type Name and Rank

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Date