

Department of the Army
Pamphlet 27-7

Legal Services

Guide for Summary Court-Martial Trial Procedure

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SUMMARY of CHANGE

DA PAM 27-7

Guide for Summary Court-Martial Trial Procedure

This major revision, dated 2 April 2014-

- o Directs parties to Appendix 9 of the Manual for Courts-Martial in lieu of the Summary Court-Martial Guide (para 2-1).
- o Updates the requirements for Summary Court-Martial officer's responsibility for ruling on motions (para 2-3).
- o Updates the requirements for Summary Court-Martial officer's examination of the Court-Martial file (para 3-1).
- o Updates the requirements for Summary Court-Martial officer's responsibility for obtaining witnesses (para 3-3c).
- o Defines Key Personnel: Summary Court-Martial officer, Convening Authority, Legal Advisor, Defense Counsel, Counsel for the Government, Paralegal Assistance, and Accused (glossary).
- o Makes administrative changes (throughout).

Legal Services

Guide for Summary Court-Martial Trial Procedure

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History. This publication is a major revision.

Summary. This pamphlet is intended as a practical guide for officers detailed as Summary Court-Martial officer. It is designed to provide Summary Courts-Martial officers with the essential procedural guidelines necessary to insure accused persons are given a fair and impartial trial

in accordance with the requirements of law.

Applicability. This pamphlet applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the US Army Reserve, unless otherwise stated.

Proponent and exception authority. The proponent of this pamphlet is The Judge Advocate General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through

their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Officer of The Judge Advocate General (DAJA-CL), 2200 Army Pentagon, Washington, D.C. 20310.

Distribution. This pamphlet is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Glossary

Chapter 1 Introduction

1–1. Purpose

This pamphlet is intended to serve as a practical guide for officers detailed as a Summary Courts-Martial (SCM) officer. It provides SCM officers with the essential procedural guidelines necessary to insure that accused Service members are given fair and impartial trials in accordance with law. It does not answer all questions of procedure or substance concerning Summary Courts-Martial, but should assist in answering some of the more commonly encountered questions from SCM officers.

1–2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Key Personnel

a. Summary Court-Martial Officer (SCM Officer). A SCM officer should be familiar with the entire contents of this pamphlet. The SCM officer is performing a judicial function. Therefore, the SCM officer must be impartial. The function of a SCM is to promptly adjudicate minor offenses under a simple form of procedure. Upon initial appointment and throughout the investigation, the SCM officer should seek legal advice. It is imperative that this advice come from a legal advisor who has no direct interest in the outcome of the proceedings.

(1) The SCM officer is the presiding officer at all sessions of the trial and is responsible for ensuring that the proceedings are conducted in a fair, orderly, and dignified manner in accordance with law.

(2) The SCM officer rules finally on all motions and all questions of fact and law.

(3) The SCM officer determines guilt or innocence and, if the accused is found guilty, adjudges an appropriate sentence.

b. Convening authority. The convening authority is the officer who refers charges to a court-martial through a convening order and details the SCM officer. (*See Rules for Court-Martial (RCM) 503, 504.*)

c. Legal advisor. Upon initial appointment and throughout the investigation, the SCM officer may seek legal advice. The legal advisor has no direct interest in the outcome of the proceedings. The legal advisor will answer any questions of law or procedure which arise. For example, the legal advisor may provide information regarding which lesser offenses are included in an offense charged, or concerning what defenses may be applicable. The SCM officer must not ask for or accept advice from the legal advisor or any other person concerning what factual conclusions should be drawn from the evidence in the case, or concerning the sentence which should be imposed upon an accused. These matters are solely the responsibility of the SCM officer.

d. Defense counsel. The accused at a SCM does not have the right to counsel. The accused may be represented during the SCM proceedings by a civilian lawyer provided by him at no expense to the government or by a military lawyer if one has been made available for that purpose by competent authority. In order for a civilian lawyer to represent an accused at a SCM, the lawyer must be qualified under RCM 502(d)(3), and the lawyer's appearance must not unreasonably delay the proceedings or be precluded by military exigencies.

e. Counsel for the government. Counsel representing the government is not required to be present at a SCM and will not attend the proceedings except in very unique circumstances. If present, government counsel will be allowed to present evidence, cross-examine witnesses, and argue for a disposition of the matter appropriate to the interest of the government.

f. Paralegal assistance. Paralegals are not typically detailed to provide clerical support to a SCM. However, the convening authority may assign a paralegal to assist the SCM officer in maintaining and preparing a record of proceedings. Paralegals may also arrange for the attendance of witnesses; coordinate the use of facilities; and prepare and furnish all correspondence to the accused, defense counsel, and other persons. Paralegal assistants will not engage in any substantive discussions of law, findings, or on the appropriateness of a particular sentence with the SCM officer.

g. Accused. The accused is the military member being charged with having committed certain offenses. It is the responsibility of the SCM officer to impartially and judicially determine whether the accused committed the offenses alleged by the government.

Chapter 2 Trial Procedure

2–1. Use of trial procedure guides

A procedural guide designed for use by SCM officers in carrying out their function is published in Appendix 9 of the Manual for Courts-Martial (MCM) 2012. When Appendix 9, Chapter 13 of the Rules for Courts-Martial (RCM) and

other legal materials available fail to provide sufficient information concerning law or procedure, the SCM officer may seek advice on these matters from their legal advisor (see RCM 1301(b)).

2-2. Evidence

The Military Rules of Evidence (Mil. R. Evid.), found in Part III of the MCM, apply at a SCM proceeding. As necessary, the SCM officer should discuss potentially applicable Mil. R. Evid. with the legal advisor.

2-3. Motions

The SCM officer rules finally on all motions and must do so in an informed and impartial manner. There are a number of types of motions that a SCM officer may be required to consider and either grant or deny, including the following:

a. Motions to dismiss. A motion to dismiss is a request to terminate further proceedings as to one or more charges and specifications on grounds capable of resolution without trial of the general issue of guilt. In other words, a motion to dismiss is not concerned with the question of guilt or innocence. A motion to dismiss is concerned with whether there are grounds for dismissal, such as: lack of jurisdiction; failure of a specification to state an offense; denial of speedy trial rights; and running of the statute of limitations. If granted, a motion to dismiss will normally terminate the proceedings, at least with respect to the charge or specification at issue. For a discussion of motions to dismiss, see RCM 907.

b. Motions to grant appropriate relief. A motion for appropriate relief is a request to correct an alleged defect in the case which deprives a party of a right or hinders a party from preparing for trial or presenting its case. For example, a specification that is indefinite or ambiguous as to time and place might give rise to a motion for appropriate relief. If granted, it would not terminate the proceeding but would necessitate an amendment of the specification to make it more definite and certain. For a list of some of these motions, together with a discussion of the relief required, see RCMs 905, 906, 907, 1304(b)(2)(C).

c. Motions to suppress. A motion to suppress, if granted, precludes the SCM officer from considering certain evidence. If the motion is granted, this does not operate to acquit the accused, but does mean that the excluded evidence may not be considered in arriving at a verdict. Motions to suppress are aimed at three areas: admissions and confessions, searches and seizures, and pretrial identifications. The SCM officer's obligation is to advise the accused of the right to make a motion to suppress evidence and that if no such motion is made, the evidence will be admitted and considered by him. The SCM officer may require such motions to specifically identify the alleged deficiency in the evidence. Accordingly, if the accused is represented by counsel at the court-martial this specificity requirement should normally be enforced. If the accused is not represented by counsel, a motion in general terms is sufficient. When an accused who is not represented by counsel objects to the evidence in general terms, the SCM officer may ask the accused questions in an attempt to focus more specifically on their complaint. For example, if the accused objects to evidence which was obtained as a result of a search, the SCM officer may ask if he believes the search was not properly authorized or whether he believes the accused did not properly consent to the search. The motion will be litigated prior to entry of the plea and the SCM officer should consult his assigned legal advisor before litigating the motion.

d. Motions for a finding of not guilty. A motion for a finding of not guilty is usually made at the conclusion of the evidence. The motion should be granted as to any offense charged if the evidence presented is insufficient to sustain a conviction for that offense or for any lesser included offense. For a discussion of the motion and the test to be applied, see RCM 917.

2-4. Attendance of witnesses

a. The SCM officer will secure the attendance of military witnesses at the trial by coordinating with the witnesses' unit commander. Generally, appearance at a court-martial takes precedence over other military duties.

b. If individuals who are not subject to the Uniform Code of Military Justice (civilians) are essential witnesses and they are unable or unwilling to appear in the absence of a subpoena and the advancement of fees and travel allowances, the SCM officer will have to issue a subpoena (RCM 703; Sec. III, AR 37-106, Chap. 13). Before doing so, the SCM officer should consult with his legal advisor. If the witness resides in the local area, the SCM officer should work with the detailed paralegal assistant to coordinate for the witness's appearance. In some instances, local civilian witnesses will be willing to appear without having their fees and costs of transportation advanced to them. Under these circumstances, the subpoena may be delivered to the witness when they appear at the trial. After the witness has acknowledged service of the subpoena in writing and after the witness testifies, the SCM officer should arrange to have the fees and allowances paid by the disbursing officer. Sometimes civilian witnesses are willing to testify without a subpoena, without reimbursement for costs and transportation, and without receipt of witness fees.

c. Although depositions may be taken from witnesses in proper cases (RCM 702; 1301 (f)), the SCM officer should always obtain the advice and direction of the convening authority before taking a deposition.

2-5. Maximum punishments

a. The maximum punishment authorized for any offense in violation of the UCMJ equals or exceeds the punitive jurisdiction of a summary court-martial (Art. 20; MCM, 2012, Part IV and App 12).

b. The maximum sentence imposable by a SCM falls into two categories: (1) that imposable upon enlisted persons above the fourth pay grade, and (2) that imposable upon enlisted persons in the fourth pay grade or lower. The maximum sentence, in addition to admonition or reprimand, which may be imposed by a SCM, is as follows:

- (1) Enlisted persons above the fourth pay grade—
 - (a) Reduction to the next inferior pay grade; and
 - (b) Forfeiture of two-thirds pay per month for one month; and
 - (c) Restriction to specified limits for two months.
- (2) Enlisted persons in the fourth pay grade or lower—
 - (a) Reduction to the lowest pay grade; and
 - (b) Forfeiture of two-thirds pay per month for one month; and
 - (c) Confinement for thirty days; or instead of (c)
 - (d) Hard labor without confinement for forty-five days; or, instead of (c) or (d)
 - (e) Restriction to specified limits for two months.

c. There is no requirement that the maximum punishment or any punishment be imposed. Lesser punishments and variations of the types of punishment are authorized (RCM 1002, 1003, 130(d), and App. 12 of the MCM). Consult RCM 1003(b) (3) for permissible variations in fines and forfeitures. *Note. When both reduction and forfeiture are imposed, the forfeiture is computed utilizing the monthly pay of the rank to which the accused has been reduced. A sentence to forfeiture should include an express statement of the dollar amount. An approved and unsuspended sentence of confinement at hard labor or hard labor without confinement automatically reduces the accused to the lowest enlisted grade (Art. 8a).* A SCM officer cannot suspend a sentence but can recommend suspension of a sentence, or portions thereof, to the convening authority.

Chapter 3

Preparing for trial

3-1. Examine the file

a. Upon initial appointment, the SCM officer should meet with the legal advisor to receive a briefing on the duties of a SCM officer. An exception may be made during deployment, where it may be impractical to meet with the legal advisor in person. In such a case, other arrangements may be made. Point of contact information for the legal advisor will be provided in the original appointment order.

b. Upon receipt of the charges and accompanying papers, the SCM officer should examine the file. It will normally include the following:

- (1) a copy of the charge sheet, DD Form 458 (Charge Sheet);
- (2) written statements of witnesses or summaries thereof;
- (3) any documentary evidence, such as DA Form 4187 (Personnel Action) indicating a change in personnel status for cases involving absence without leave; and
- (4) copies of records of previous convictions, if any.

c. The SCM officer must keep in mind that the statements of witnesses contained in the file may be used by him for the purpose of preparing for trial only, that is, to determine the order of witnesses and the questions the SCM is going to ask them, and for certain other limited purposes (as, for example, the impeachment of the testimony of a witness at trial by previous inconsistent statements (Mil. R. Evid. 613(a), (b); 801(d)). The SCM officer may not use the CID or MP report as a substitute for live witnesses except to the extent the accused consents after being advised that he need not do so, and that he is entitled to have witnesses present. The SCM officer may consider only testimony and other evidence admissible under the rules of evidence (Part III of the MCM) which he has admitted as evidence in the presence of the accused. A record of previous convictions will rarely be admissible on the question of guilt or innocence. Therefore, in most cases the SCM officer may consider previous convictions only for the purpose of determining what sentence is appropriate in the event he has found the accused guilty. Remember, that as to any offense to which the accused pleads not guilty, the SCM officer must presume the accused to be innocent unless he is convinced of guilt beyond a reasonable doubt by legal and competent evidence admitted during trial in the accused's presence.

3-2. Study of the case

a. *Examine the charge sheet carefully.* The legal advisor may assist the SCM officer in this process.

(1) Determine whether the pay of the accused entered on page 1 of the charge sheet is consistent with the accused's grade and length of service. If the pay of the accused as reflected on the charge sheet appears to be inaccurate, the SCM officer determines the facts and makes appropriate corrections on all copies of the charge sheet. The SCM officer should initial any changes he makes.

(2) Correct any obvious administrative, clerical, or typographical errors on the charge sheet and initial each.

Corrections of the charges and specifications which involve the inclusion of any person, offense, or matter not fairly included in the charges as referred for trial will not be made (RCM 603, 1304(a)). If the charges or specifications are faulty in some material respect, the SCM officer should return the file to the convening authority, explaining the reasons for returning it.

(3) Ascertain whether the endorsement by which the case has been referred for trial is administratively correct, including the designation of the court-martial order by which the SCM officer was detailed as a SCM officer. If the SCM officer determines that the referral for trial is incorrect, return the file to the convening authority with an explanation for doing so.

(4) Ascertain whether the charges are sworn. If they are not, the SCM officer confers with the accuser to determine whether he desires to swear to the truth of the charges. An accused may not be tried on unsworn charges over his objection.

b. Determine the law applicable to the case.

(1) The SCM officer should familiarize himself with the elements (essential facts) of the offense(s) charged. Read the discussion of the offense or offenses in Part IV of the MCM, particularly the paragraphs entitled, "Proof." If an offense is charged as a violation of Article 134 and no discussion of the specific elements appears in the MCM, the elements of the offense can be identified by breaking the specification down into its essential, component allegations. Each of these allegations is an element of the offense. For example, if the offense charged is careless discharge of a weapon, the offense will be charged in substantially the following language: "In that Private (E2) Hef L. Finger, U.S. Army, Company B ..., did, at Fort ..., on or about 3 September 19 ..., through negligence, discharge a rifle in the barracks of Company B, ..." (MCM 2012, Part IV, Para. 80f).

(2) The SCM officer should ensure that each specification actually alleges an offense (*see* RCM 307(c) and MCM, part IV) and that each offense is charged as a violation of the proper article of the Code. If he concludes that the wording of a specification departs so materially from an applicable form specification that either no offense is alleged or the specification is ambiguous, he should return the file to the convening authority stating the reasons for returning it.

(3) If the accused is charged with a failure to obey a regulation or written order and a copy of the directive is not included in the file, the SCM officer will obtain copies of the directive and be familiar with its provisions.

(4) Determine the admissibility and authentication of any documentary evidence, such as DA Forms 4187 and copies of records of previous convictions (*see* Mil. R. Evid. 803, 901, 902, 1001–1005). Assign exhibit numbers to all documentary evidence and any real evidence (physical objects) in the order in which the SCM officer intends to use them at trial. When the SCM officer actually receives an exhibit in evidence at the trial, mark it, "Received in Evidence," followed by his initials.

c. Plan an orderly procedure.

(1) Determine the order in which the SCM officer plans to call the witnesses. Witnesses for the government should be called first, normally in an order which will permit the facts of the case to be presented, as nearly as possible, in a chronological manner.

(2) The SCM officer may not take the testimony of any witness by telephone at the trial without the accused's consent. However, if in preparing the case or during the trial he feels a need to make further inquiry, the SCM officer may communicate by telephone or otherwise with prospective witnesses or others, *except the accused*, for the purpose of determining the extent of their knowledge concerning the case, whether the SCM officer will call them as witnesses, whether they are in possession of admissible documentary or real evidence, or whether they know of witnesses or evidence that should be presented at trial. The SCM officer *must not* consider an out of court statement as evidence in the case unless it becomes the subject of a stipulation of fact or testimony (*see* RCM 811) to which the accused specifically and knowingly consented. Also, in preparing for the trial, the SCM officer may locate and obtain for use at the trial any relevant documentary or real evidence, even if it was not contained or mentioned in the file the SCM officer received.

d. Reasons. Determine whether there are any reasons which would prevent the SCM officer from conducting a fair and impartial trial. If there are, as when the SCM officer has personal knowledge of the incident involved in the charge because of having been an eyewitness to the event or otherwise, notify the convening authority and the legal advisor of that fact.

e. Questions. Any questions which arise during the SCM officer's examination of the charge sheet and determination of the law applicable to the case should be directed to the legal advisor.

3–3. Preparation for initial session and procurement of witnesses

a. Arrange for a location at which the initial session may be held. This location must accommodate the hearing of witness testimony. Set a time, date, and uniform for the initial session. *Note.* Figure 3–1 is an example of a desired room arrangement for the conduct not only of the initial session but also of the trial proceedings as a whole.

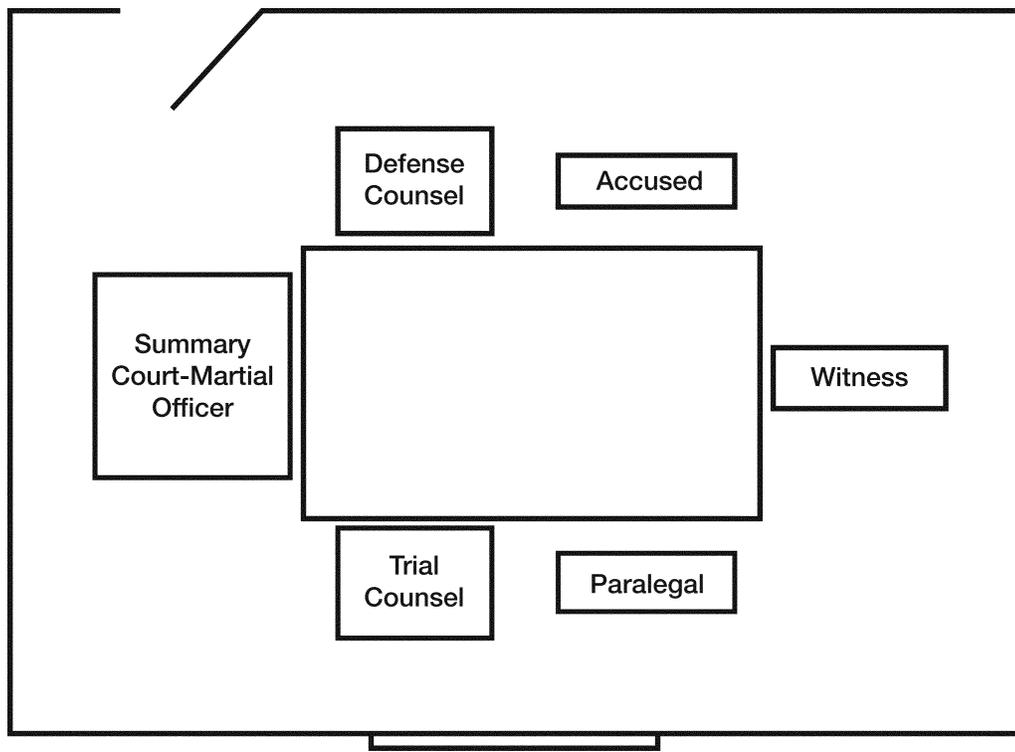


Figure 3-1. Suggested arrangement for courtroom for trial

b. Notify the accused, through his commanding officer, to be at the prescribed location in appropriate uniform at the time set for the initial session. Inform the accused of the right to consult with qualified defense counsel before the trial date for advice concerning rights and options and the consequences of waivers of these rights by voluntarily consenting to trial by summary court-martial. DA Form 5111 (Summary Court-Martial Rights Notification/Waiver Statement) must be completed and attached to each copy of the charge sheet. If the SCM officer denies the accused an opportunity to consult with counsel prior to trial, he must fully document the circumstances in a certificate attached to the record of trial (see AR 27-10, paragraph 5-21).

c. Notify all witnesses whom the SCM officer intends to call to be ready to appear at the place of trial upon further notification. For planning purposes, the SCM officer should notify the witnesses of a tentative time and date at which they may be required to appear. If the accused pleads guilty to the charges, however, the SCM officer may not need to call the witnesses. Furthermore, if the accused requests additional witnesses to testify on his behalf or if he is granted a continuance to obtain additional evidence, the date on which the witnesses will be called to testify may have to be postponed. By alerting the witnesses to be ready to appear, if needed, but by not requiring their actual appearance until the SCM officer notifies them, avoids requiring them to appear needlessly.

d. Determine whether military legal counsel will be available to represent the accused at trial free of cost. The SCM officer's determination of the availability of counsel without cost to the accused is in furtherance of an orderly procedure and alerts the appropriate authority of the need for counsel in the event of a request by the accused.

e. Obtain copies of DD Form 2329 (Record of Trial by Summary Court-Martial) and complete paragraphs 1 through 3.

Chapter 4 Trial

4-1. Opening initial session of the trial proceeding

The procedure for conducting a trial by SCM encompasses those applicable procedures prescribed for a trial by general court-martial (see MCM, 2012, chap VIII; chap XIII; app. 8). The initial session of the trial proceedings will be held pursuant to the arrangements the SCM officer has made in accordance with paragraph 3-3. This session should be

conducted with dignity and decorum, inasmuch as the initial session is a part of the formal trial proceedings, even though no witnesses are normally called to testify. The following suggested procedure offers those normally encountered formalities common to trials by SCM:

- a. Identification of SCM Officer and convening orders. The orders themselves will convene the SCM.
- b. Referral of charges.
- c. Assembly of the court.
- d. Cautionary instructions.
- e. Explanation of duties of the SCM Officer.
- f. Explanation of right to object to trial by SCM.
- g. Explanation of right to inspect allied papers and personnel records.
- h. Identification of Government witness(es).
- i. Explanation of right to cross-examine.
- j. Explanation of right to present evidence.
- k. Explanation of testimonial rights concerning offense(s).
- l. Explanation of evidence considered.
- m. Explanation of testimonial rights concerning offense(s).
- n. Explanation of right to remain silent.
- o. Explanation of testimonial rights in extenuation and mitigation.
- p. Announcement of maximum punishment.
- q. Explanation of plea options.
- r. Reading of charge(s).
- s. Explanation of lesser included offense(s).
- t. Motions.
- u. Explanation of pleas.

4-2. Receiving pleas of guilty; findings

a. The SCM officer must conduct an in-depth inquiry into any plea(s) of guilty to ensure that the accused fully understands the ramifications of such plea(s). Before conducting the inquiry set out in the guide found in Appendix 9, MCM, the SCM officer should become thoroughly familiar with and be able to explain to the accused the elements of the offenses to which he has pleaded guilty as well as the appropriate discussions concerning those elements located in the elements of offenses section of DA Pam 27-9. The following procedure is suggested for use by the SCM officer in the event the accused desires to plead guilty to one or more of the charged offense(s):

- (1) Explanation of plea of guilty.
- (2) Waiver of Fifth and Sixth Amendment rights.
- (3) Explanation of elements of offense(s).
- (4) Elicitation of accused's description of offense(s).
- (5) Maximum punishment based on plea.
- (6) Plea of guilty to lesser included offense.
- (7) Voluntariness of guilty plea.
- (8) Acceptance of provident plea.
- (9) Announcement of findings.

b. If the SCM officer determines that the accused's plea of guilty to any offense has not been knowingly and voluntarily (providently) entered, the SCM officer should enter a plea of not guilty to such offense(s).

c. In the event of a pretrial agreement between the accused and the convening authority that includes one or more pleas as a condition of the agreement, and if the accused does not knowingly and voluntarily enter a plea of guilty to each offense so identified by the pretrial agreement, the SCM officer should recess the proceedings and contact the legal advisor. Before the Summary Court-Martial proceeds, the SCM officer must determine whether the convening authority wishes to withdraw from the pretrial agreement.

4-3. Receiving evidence on pleas of not guilty; findings

The following procedure is suggested in a trial by Summary Court-Martial for receiving evidence relative to the question of the accused's guilt or innocence (Witnesses should be excluded from the courtroom except when they testify.):

- a. Reassembly of proceedings.
- b. General nature of the charge(s).
- c. Presentation of Government evidence.
- d. Calling witnesses.
- e. Swearing witnesses (oath).

- f.* Formal questions.
- g.* Direct-examination.
- h.* Cross-examination.
- i.* Identification and presentation of real (physical) evidence.
- j.* Presentation of confessions and admissions.
- k.* Excusing a witness.
- l.* Presentation of documentary evidence.
- m.* Closing the government's evidence.
- n.* Opening the accused's case.
- o.* Calling additional witnesses.
- p.* Recall of a witness.
- q.* Explanation of accused's rights as a witness.
- r.* Closing the trial on the issue of guilt or innocence.
- s.* Deliberating on findings.
- t.* Announcement of findings.

4-4. Sentencing

The purpose of this section is to set forth an orderly presentencing and sentencing procedure. The following matters may be considered:

- a.* Verification of personal data.
- b.* Evidence of previous convictions.
- c.* Witnesses in extenuation and mitigation.
- d.* Documentary matters in extenuation and mitigation.
- e.* Testimonial rights of accused in extenuation and mitigation.
- f.* Witnesses in rebuttal.
- g.* Argument on sentence.
- h.* Deliberating on sentence.
- i.* Announcing sentence.
- j.* Adjourning the court-martial.

Chapter 5 Post-trial duties

5-1. Purpose and scope

The purpose of this section is to advise the SCM officer of the appropriate post-trial actions that he must accomplish.

5-2. Completion of the record of trial

As soon as practicable upon completion of the court-martial, the SCM officer must prepare an original and at least two copies of the record of trial. The SCM officer must also authenticate the record by signing each copy in the space provided. Typically, the SCM officer can authenticate the record of trial on the same day the court-martial is completed. As soon as the record is authenticated, the SCM officer must cause a copy of the record of trial to be served on the accused and attach the accused's receipt for the copy to the original record. The attorney advisor should review the record or report prior to distribution. If the accused was represented by counsel, the copy of the record may be served on counsel. The original record must be forwarded to the convening authority.

5-3. Report of result of trial

Prepare, sign, and dispatch a sufficient number of copies of DD Form 2707-1 (Department of Defense Report of Result of Trial) by SCM. Distribute one copy to the immediate commander of the accused, one copy to the convening authority if they are not the accused's immediate commander, one copy to the commanding officer of the confinement facility if the accused was in pretrial confinement or if the sentence adjudged includes confinement, and such other copies as may be required by local directives. The attorney advisor should review the record or report prior to distribution.

5-4. Return of file to convening authority

When all of the procedures indicated above have been completed, return the file to the convening authority, including, in addition to all papers originally accompanying the file, any documentary or other exhibits received or offered in

evidence at the trial (or copies or descriptions thereof certified by the SCM officer, *see* Mil. R. Evid. 902(4); RCM 1001–1008) which were not included in the original file.

5–5. Recommendation for clemency

The SCM officer may, if he considers it appropriate, recommend to the convening authority that clemency, in the form of a suspension of part or the entire sentence or in any other form, be extended to the accused. Any recommendation for clemency should be in writing.

Appendix A References

Section I Required Publications

Manual for Courts–Martial

2012 edition (Cited throughout the publication.)

DA Pam 27–9

Military Judge’s Benchbook (Cited in para 4–2a, glossary.)

Section II Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication.

AR 27–10

Military Justice

Section III Prescribed Forms

Unless otherwise indicated, DD Forms are available on the Office of the Secretary of Defense (OSD) Web site at www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm/.

DD Form 2329

Record of Trial by Summary Court-Martial (Prescribed in para 3–3.)

Section IV Referenced Forms

DA Forms are available on the Army Publishing Directorate Web site at www.apd.army.mil/.

DD Form 458

Charge Sheet

DD Form 2707–1

Department of Defense Report of Result of Trial

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 4187

Personnel Actions

DA Form 5111

Summary Court-Martial Rights Notification/Waiver Statement

Glossary

Section I Abbreviations

AR

Army Regulation

DA

Department of the Army

HQDA

Headquarters, Department of the Army

JA

Judge Advocate

MCM

Manual for Courts-Martial

MPI

Military Police Investigations

Mil. R. Evid.

Military Rules of Evidence (found in the MCM)

OTJAG

Office of The Judge Advocate General

RCM

Rules for Courts-Martial (found in the MCM)

SCM

Summary Court-Martial

TJAG

The Judge Advocate General

UCMJ

Uniform Code of Military Justice

Section II

Terms

Counsel

Judge Advocates or civilian attorneys certified under Article 27(b) of the UCMJ.

Deposition

A legal proceeding in which a witness's testimony is recorded verbatim and both government and defense are provided the opportunity to question and cross-examine the witness.

Elements

A "fact necessary to constitute the crime with which [the accused] is charged." Each element is found in Chapter 3 of DA PAM 27-9, Military Judges' Benchbook, under the charged offense. An accused may not be found guilty of any offense unless the SCM officer finds that each element of that offense has been proved, beyond a reasonable doubt, by evidence that the SCM officer has admitted with respect to that offense.

Evidence

Anything (item, document, or testimony) admitted by the SCM officer under one or more of the Military Rules of Evidence (Part III, MCM).

Section III**Special Abbreviations and Terms**

This section contains no entries.

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