

INFORMATION PAPER

SUMMARY COURTS-MARTIAL

I. References

- a. R.C.M. 1301-1306
- b. M.C.M. Apps 9 and 15
- c. Army Regulation 27-10, Military Justice, paragraph 5-21.
- d. DA Pam 27-7, Guide for Summary Court-Martial Trial Procedures (Obsolete)

II. Overview. Appendix 9 is the script for a SCM. The client should have a copy at the SCM.

III. Rights. All clients should be advised of the following rights regarding SCM:

A. To consult with qualified military defense counsel. Though the client does not have the right to have you represent them at the hearing, they have the right to consult with you prior to their hearing. Additionally, they have the right to have civilian defense counsel present at the SCM at no expense to the government.

B. To object to SCM. Clients must be informed that they do not have to accept trial by SCM. A SCM is not a federal conviction, though it will most likely adversely impact on future military service. Based on the review of the available evidence, clients must be informed about probable outcomes at the SCM and likely results if the SCM is refused (such as referral to a higher level of court-martial).

c. To review and present evidence, including the right to know what witnesses will be called and to call witnesses. Defense counsel should review the evidence with the client, advise them about the evidence against them and their right to present evidence in their behalf. Defense counsel should also advise them that the Military Rules of Evidence are applicable at SCM and consider whether any pre-trial suppression motions should be made. Defense Counsel will also review SCM procedures with them and indicate how they should present evidence in their favor.

d. To plead Guilty or Not Guilty. The client has the right to plead guilty or not guilty to any or all of the offenses brought against them, including the right to plead guilty to lesser included offenses. Clients must clearly understand that if they plead guilty, they are admitting that they committed the charged offenses. If they plead not guilty, they are requiring that their guilt be proved beyond a reasonable doubt.

e. To Testify. Clients must also understand their rights regarding testifying at trial and should discuss with defense counsel the best strategy to take regarding testifying or remaining silent. Clients should understand that they are subject to cross-examination by the Summary Courts Martial.

f. To Present Evidence on Sentencing. Clients must also understand how to present evidence at sentencing if they are found guilty. Defense counsel should suggest evidence to present in mitigation and extenuation and know that they can make a sworn or unsworn statement to the Summary Courts-Martial. Defense counsel can also assist them in preparing their sentencing evidence.

III. Procedures. Defense counsel should also discuss the following information:

a. The maximum punishment that they can receive.

(1) E-4 and below:

(a) reduction to the lowest pay grade; and

(b) forfeiture of two-thirds of 1 month's pay; and

(c) confinement for 1 month OR 45 days hard labor without confinement OR 60 days restriction.

NOTE: By operation of Article 57, UCMJ, any forfeiture of pay or reduction in grade takes effect on the earlier of 14 days or approval of the sentence by the convening authority. Further, the convening authority can defer forfeitures or reduction in grade.

(2) E-5 and above:

(a) reduction of one grade;

(b) forfeiture of two-thirds of 1 month's pay; and

(c) 60 days restriction.

b. How the SCM will be conducted and who is in charge. A commissioned officer will serve as the Summary Courts-Martial. This officer essentially serves as the judge, jury, and prosecutor and defense counsel. He is required to thoroughly and impartially inquire into both sides of the matter and will ensure that the interests of both the government and the accused are safeguarded. He will obtain and examine all evidence concerning the charged offenses. He will also call and question witnesses much like a prosecutor would and should assist your client in cross-examining witnesses and reviewing exculpatory evidence. Ultimately, and most importantly, the Summary Courts-Martial determines guilt or innocence and pronounces sentence.

c. Similarity to a higher level court-martial. As stated above, defense counsel should walk your client through the steps at a SCM, including opening statements, cross and direct examination, closing arguments, and evidence regarding sentencing. Defense counsel should explain to them that a SCM is much like a higher level court-martial, though with abbreviated proceedings and fewer personnel.

d. Action by the Convening Authority, clemency, and appeal. Defense counsel should explain to your client what happens after the trial, including time periods for submitting appellate matters and available options by the Convening Authority. Defense counsel should explain that after sentencing, if any, a summarized record of trial is prepared and presented to the client.

Defense counsel should also advise them about avenues of appeal, that their case will be reviewed by a judge advocate for legal sufficiency and that they can appeal adverse decisions to The Judge Advocate General.

e. Filing. Finally, clients must also be advised about the likely impact of a SCM on their future in the military and in the civilian arena. The record of the summary court-martial will be filed with the summary court-martial convening authority, MILPO, and the U.S. Army Enlisted Records and Evaluation Center.

IV. Conclusion. Constrained usually only by time and other duties, defense counsel have many fruitful opportunities to assist clients facing SCM charges. Overall, the more time spent with a client reviewing the SCM packet and explaining available rights and procedures, the more likely that the client will be better prepared to present their case at the SCM and to achieve more favorable results.