

Courts-Martial Defense

The military can be a great career. However, a courts-martial can be a great career ender. Not only does the service member stand to lose his or her job, but depending on the characterization of discharge, there can be a loss of Veteran's benefits, including eligibility for a pension. A chart showing VA benefits based on characterization of discharge can be found at the following link: <http://hss.sbcounty.gov/va/PDFs/14-BenefitsBasedonCharacterofService.pdf>

By volunteering for military service, a person subjects himself or herself to the Uniform Code of Military Justice (UCMJ). This Uniform Code applies to all branches of the military and, under some circumstances, specified categories of civilians. The Manual for Courts-Martial sets forth the punitive articles along with the elements of each offense. Some of the offenses are unique to the military, such as: Absence without Leave (Art. 86); Assaulting or willfully disobeying a superior commissioned officer (Art. 90); Insubordinate conduct towards a warrant, noncommissioned or petty officer (Art. 91); Failure to obey an order or regulation (Art. 92); and Mutiny and Sedition (Art. 94), to name a few.

A courts-martial sentence can carry stiff penalties. In addition to loss of pay, reduction in rank and confinement, a court-martial conviction may also result in a loss of the military pension. Pursuant to federal statute (10 U.S.C. § 12740), a person who is separated pursuant to sentence of a court-martial with a Dishonorable Discharge, a Bad Conduct Discharge, or (in the case of an officer) a Dismissal, is not entitled to retired pay. Furthermore, a conviction under the UCMJ is reportable to the defendant's home state of record. In the case of sex offenses, the defendant, if proven guilty, must register as a sex offender.

The courts-martial process begins with the preferral of charges (R.C.M. 307). Once charges are preferred, the case may be referred to one of three types of courts-martial: summary, special, or general. R.C.M. 401(c). In addition, pursuant to R.C.M. 405(d)(2) and R.C.M. 506, the accused is entitled to be represented by counsel. The Rules provide for the detailing of a military defense lawyer at no cost to the accused. The accused also has the right to be represented by civilian counsel so long as it is at no expense to the United States.

The **defense lawyer's** role is crucial from the start. **Defense counsel** can review the charges to ensure that they are not duplicative, that the charges are properly drafted, that the charge sheet (DD Form 458) is properly signed and served. If a General Courts-Martial (GCM) is recommended, an Article 32 hearing must be held and the defendant or defense counsel will be permitted to introduce evidence and to cross-examine witnesses. If the defense is persuasive, it may result in the some or all of the charges not being referred.

Attorney Robert Goldman has served as a Reserve Officer in the U.S. Army JAG Corps and has attained the rank of LTC. If you are facing a courts-martial and are considering hiring civilian counsel, please contact our office for a free initial consultation.

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