

2. SUMMARY COURTS-MARTIAL [SCM]

2.A. FUNCTION, JURISDICTION, AND CONVENING OF SCM

2.A.1. Function of Summary Courts-Martial [SCM]

a. A summary court-martial [SCM] is a judicial proceeding intended to provide prompt adjudication of minor offenses by a simple procedure. [See, subparagraph 1.A.5.a above for a definition of minor offense.] It is designed to inquire thoroughly and impartially into both sides of a matter to ensure the interests of both the government and the accused are safeguarded. [See, RCM 1301-6.]

b. A summary court-martial consists of a single commissioned officer on active duty. The officer shall be a Coast Guard officer unless specific authority for an officer from another service is granted by the Chief Counsel (Commandant (G-L)). The officer should be a lieutenant or above, whenever practicable. If more than one officer is attached to the command, the convening authority shall not be the summary court-martial. [See, section 2.B below for one-officer commands.]

2.A.2. SCM Jurisdiction

a. Summary courts-martial have the authority to try all enlisted persons subject to the UCMJ for any non-capital offense made punishable under the UCMJ.

b. Summary courts-martial may not try an offense prosecuted in a United States federal court. As a matter of Coast Guard policy, Commandant (G-L) authorization must be obtained before summary court-martial may try an offense pending trial or tried by a state or foreign criminal court. "Pending trial" means that state or foreign government has issued an indictment or information or has taken similar steps toward prosecution. Requests for such authorization must be in writing and provide a thorough justification why trial by summary court-martial should be authorized. [See, paragraph 3.B.4 below.]

c. Summary courts-martial have the independent duty to determine all factual conclusions drawn from the evidence, the guilt or innocence of the accused, and the sentence to be imposed, if any.

d. Summary courts-martial may seek advice from the unit's servicing legal office on questions of law.

2.A.3. Convening a SCM

a. Any person who may convene a general or special court-martial may convene summary courts-martial. [See, paragraphs 3.A.1 and 3.A.2 below.]

b. If the convening authority is the accuser, victim, or a witness in a case, he or she may either convene the summary court-martial or forward the charges to a superior authority in accordance with subparagraph 2.B below. Any decision to convene the court in lieu of forwarding the charges should be made with the accuser concept in mind. Consultation with the servicing legal office is recommended.

c. The authority to convene a summary court-martial may be restricted by competent superior authority.

2.B. SCM AT ONE OFFICER COMMANDS

2.B.1. Convening and acting as a summary court

When the commanding officer is the only one commissioned officer permanently assigned to a command, he or she act as both the convening authority of a summary court and the summary court officer. Alternatively, he or she may forward the charges to a superior authority for disposition in accordance with subparagraph 3.D.2.c below. Consultation with the servicing legal office is recommended. If the officer is also the accuser in the case, *see* subparagraph 2.A.3 above.

2.B.2. Action

When a summary court-martial is held by the only officer assigned to a command, the action of the convening authority must state that the convening authority/summary court officer is the only commissioned officer permanently assigned to the command.

2.C. RIGHT TO REFUSE SCM

2.C.1. Right to Refuse SCM

All persons in the Coast Guard have the absolute right to refuse trial by summary court-martial. If an accused refuses trial by summary court-martial, a summary court-martial may not be held in his or her case, unless the accused later consents to trial by summary court-martial.

2.C.2. Acceptance of Trial by SCM

An accused may accept trial by summary court-martial with or without prior consultation with an attorney. His or her decision to accept should be reflected in writing stating on its face it is a voluntary and knowing acceptance and bearing the personal signature of the accused. Enclosure (21a), or an equivalent form, should be used for this purpose. The original of such form should be attached to the record of trial. The absence of such a form may result in a conviction at summary court-martial being inadmissible at a later trial by court-martial. The absence of the form, however, has no effect on the validity of the summary court-martial itself.

2.D. RIGHT TO COUNSEL AT SCM

2.D.1. Opportunity to Consult with a Military or Civilian Attorney Prior to Accepting SCM

An accused has the right to refuse to be tried by a SCM. To assist the accused in making an informed decision regarding this right, the accused should be afforded the opportunity to consult with a military attorney, certified in accordance with Article 27(b), UCMJ, or a civilian attorney. A military attorney may be assigned to provide this consultation at no cost to the accused. An accused does not have a right to the detail of any particular military attorney [*see*, RCM 506(a)]. The accused may also retain a civilian attorney at no expense to the government, provided the consultation does not unduly delay the summary court-martial proceeding. An attorney-client relationship shall attach when an accused exercises this opportunity to confer, but for attorney-client privilege purposes only. Because of this attorney-client relationship, the military attorney who has consulted with the accused may not later act as summary court-martial in the same case. Military attorneys detailed by the Coast Guard for consultation will not undertake to represent the accused unless directed to do so by proper authority. The convening authority or his or her designee is responsible for advising the accused of the opportunity to confer with a military or civilian attorney. If an accused waives this opportunity to confer, he or she must do so in writing. [*See*, enclosure (21a).]

2.D.2. Representation for Accused

2.D.2.a. Attorney Representation

Generally, the accused has no right to be represented by an attorney during the SCM proceeding. However, the convening authority may request a military attorney be detailed to represent the accused during the proceeding if extraordinary circumstances require the presence of a military attorney. Before making such a request, the convening authority should consult with the servicing legal office. A civilian attorney hired by the accused may be allowed to appear to represent the accused at a SCM proceeding, provided the attorney is qualified under RCM 502(d)(3) and such appearance will not unduly delay the proceeding or interfere with military exigencies.

2.D.2.b. Non-Attorney Representation

Although a summary court is charged with safeguarding the rights of the accused, including assisting him or her with the examination of witnesses, the convening authority may in certain cases provide a representative to assist the accused. Whether a representative is to be provided is a matter within the sole discretion of the convening authority. When considering whether one should be appointed, the convening authority should consider the complexity or seriousness of the charges as well as the capability of the individual accused to understand and participate in the court proceedings. Any appointed representative shall be an officer or petty officer and should normally be attached to the same unit as the accused. The representative shall assist the accused in preparing for and participating in the court proceedings including, as necessary and appropriate, questioning witnesses, presenting the accused's case, and acting as a spokesperson for the accused. The relationship between the accused and the appointed representative is privileged in the same manner as is the relationship between an attorney and his or her client.

2.E. SCM PROCEDURES

2.E.1. Preparation of Charge Sheet

The charge sheet shall be prepared in accordance with paragraph 3.D.1 below. [*See also*, Appendix 4, MCM and enclosures (10b) and (10c).] Consultation with the servicing legal office prior to preferral of charges is critical.

2.E.2. Convening Order

The convening order may consist of an order from the convening authority [*see*, enclosure (11a)], or, by a notation signed by the convening authority on the charge sheet [*see*, RCM 1302(c)]. In either case a written statement will be made as follows: "Designation of this convening authority is Secretarial and pursuant to Article 24, UCMJ." This will satisfy the requirements of RCM 504(d)(2).

2.E.3. Pretrial Duties

The summary court officer shall examine the charge sheet, all allied papers, the service record of the accused if reasonably available, and RCM 1301-6 before trial. Any substantial irregularities should be immediately reported to the convening authority.

a. The summary court officer may, subject to RCM 603, correct errors on the charge sheet by initialing them.

b. The summary court officer may discuss legal matters with the command's servicing legal office. [*see* paragraph 2.A.2 above.]

2.E.4. Preliminary Proceeding

After reviewing the file as above, the summary court officer shall conduct a preliminary proceeding with the accused as described in RCM 1304(b)(1). [See, Appendix 9, MCM.] After giving the accused a reasonable period of time to consider his or her right to refuse trial by SCM, the summary court officer shall record the accused's response. If the accused rejects trial by SCM, the papers shall be returned to the convening authority with no further action.

2.E.5. Trial

a. After completing the preliminary proceeding and obtaining the consent of the accused to trial by summary court-martial, the trial should proceed as per RCM 1304(b)(2). Enclosure (21b) contains a guide for the proceeding that should be followed. Enclosures (21c) and (21d) are a blank and sample Record of Trial by Summary Court-Martial, Form DD-2329, to be used by the summary court officer.

b. A reservist may be tried by summary court-martial either while on active or inactive duty training. A reservist, not on active duty, may be ordered to active duty for trial by SCM. A summary court-martial conducted during inactive duty training may be in session only during normal periods of such training. A period of inactive duty training shall not be scheduled solely for the purpose of conducting a SCM.

2.F. SCM PUNISHMENTS

2.F.1. Maximum Punishments

a. The following maximum punishment that may be adjudged at a SCM on an E-4 or below [see, subparagraph 2.F.2 below.]:

- (1) One month confinement
- (2) Forty-five days hard labor without confinement;
- (3) Two months restriction;
- (4) Forfeiture of 2/3 of one month's pay, or a fine not exceeding the amount of 2/3 of one month's pay, or both fine and forfeiture but the combination not to exceed 2/3 of one month's pay;
- (5) Reduction to the lowest pay grade; and
- (6) Reprimand.

b. The following maximum punishment that may be adjudged at a SCM on an E-5 or above:

- (1) Two months restriction;

- (2) Forfeiture of 2/3 of one month's pay, or a fine not exceeding the amount of 2/3 of one month's pay, or both fine and forfeiture but the combination not to exceed 2/3 of one month's pay;
- (3) Reduction to the next inferior pay grade; and
- (4) Reprimand.

2.F.2. Limitations on Punishment

a. The maximum forfeiture of pay, and the maximum reduction in pay grade may be adjudged, regardless of whether any other punishment is adjudged.

b. A sentence imposed upon enlisted members above the pay grade of E-4 may not include confinement, hard labor without confinement, or reduction in grade except to the next inferior grade. This includes an E-5 who is reduced by the summary court-martial to E-4. [*See*, RCM 1301(d)(2).]

c. Confinement on bread and water or diminished rations is not authorized in the Coast Guard.

d. The forfeiture of pay, fine, or combination of forfeiture and fine may not exceed two-thirds of one month's pay (total). A forfeiture may be allocated to occur over a two-month period. A forfeiture or fine shall be recorded in the exact whole dollar amount. A forfeiture will also be recorded in the amount to be forfeited each month, followed by the number of months the forfeiture will last. [*See*, RCM 1003(b)(2).]

e. A fine may only be adjudged in an amount equal to or less than the maximum forfeiture that could have been adjudged and should normally only be adjudged when the offense committed resulted in unjust enrichment to the accused.

f. If a reduction in pay grade is adjudged along with a forfeiture or fine, the maximum amount of the forfeiture, fine, or both shall be based upon the pay grade to which the accused is reduced.

g. A sentence that includes restriction and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum limit for each. (For example: 60 days restriction and 45 days hard labor without confinement would be a proper combination of the two punishments.) The combined punishments shall be served concurrently, unless otherwise suspended or deferred.

h. A sentence that includes a combination of confinement and restriction may be imposed as an appropriate sentence so long as it does not exceed the maximum amount of confinement authorized. Restriction can be substituted for confinement at the rate of 2 days restriction for each day of confinement. (For example: 15 days confinement and 30 days restriction would be a proper combination of the two punishments.) The combined punishments shall be served consecutively, unless otherwise suspended or deferred.

i. A sentence that includes confinement and hard labor without confinement may be imposed as an appropriate punishment so long as it does not exceed the maximum amount of confinement authorized. Hard labor without confinement can be substituted for confinement at the rate of 1 1/2 days hard labor without confinement for each day of confinement. (For example: 16 days confinement and 21 days hard labor without confinement would be a proper combination of the two punishments.) The combined punishments shall be served consecutively, unless otherwise suspended or deferred.

j. Records of nonjudicial punishments and prior SCM are not “convictions” and shall not be noted as convictions in the record of trial. If obtained from the accused’s personnel records and properly introduced in evidence, records of nonjudicial punishment and prior SCM may be considered as evidence of the accused’s prior military service.

k. No confinement or restriction may be imposed on a reservist tried by summary court-martial conducted during inactive duty training, or active duty pursuant to an order unless the order was approved by Commandant (G-WTR). Forfeitures imposed on a reservist at a SCM may be collected from pay received during subsequent periods of service whether active or inactive duty.

2.G. SCM POST TRIAL MATTERS

2.G.1. Record of Trial [ROT]

The record of trial [ROT] shall be prepared in accordance with RCM 1305 and Appendix 15, MCM.

a. In cases where a plea of not guilty has been entered for one or more specifications of which the accused is found guilty, the ROT shall contain a summary of all evidence received at trial used to prove each element of any offense of which the accused was found guilty. A summary of evidence considered during sentencing is not required.

b. The convening order, if any, the charge sheet and all documentary evidence shall also be attached to the ROT. Photographs of physical evidence should be obtained and attached to the ROT.

2.G.2. Forwarding of ROT

After a copy is given to the accused, the original and two copies shall be forwarded to the convening authority, except as noted in subparagraph 2.G.2.b below.

a. The accused may submit matters per RCM 1105 within 7 days after the sentence is announced. The convening authority may extend this period by 20 days for good cause.

b. The convening authority shall take action on the record as per RCM 1107. Consultation with the servicing legal office is strongly advised, but not required, prior to taking SCM action. No action by the convening authority is required in cases resulting in an acquittal. The ROT of an acquittal may be forwarded directly to Commandant (G-LMJ) after the summary court officer authenticates the ROT.

2.G.3. Effective Date of Punishment

Confinement starts on the date announced unless otherwise deferred by the convening authority. All other approved and unsuspended punishment are effective on the date of the convening authority's action.

2.G.4. Suspension

A summary court officer may not suspend any part of a sentence. The court may recommend suspension of all or a part of a sentence to the convening authority.

2.G.5. Vacation of Suspension

2.G.5.a. Persons Authorized to Vacate

Any commanding officer authorized to convene a SCM may vacate the suspensions during the period of probation.

2.G.5.b. Reason for Vacating

Vacation of a suspension may only be based on an offense under the UCMJ committed during the period of suspension, or violation of a condition of suspension [*see*, RCM 1109].

2.G.5.c. Vacation Proceedings

Except for instances where the basis for the vacation is the current unauthorized absence of the probationer, a commanding officer shall conduct an informal hearing on the alleged violation of probation before vacating the suspension of any punishment. During the hearing the probationer shall be given the opportunity to be heard in person and to present witnesses and documentary evidence. [*See*, RCM 1109(e).] Enclosure (7b) or correspondence in a similar format shall be prepared to insure these requirements are met and to record the proceedings. The completed original shall be forwarded in the same manner as the ROT for the SCM.

2.G.5.d. When Probationer Ordered into Confinement

When the probationer has been ordered into confinement under RCM 1109(c)(1), the officer conducting the vacation hearing required by RCM 1109(e) shall normally complete the hearing within the seven-day period noted in RCM 1109(c)(4). Failure to complete

the hearing within this time frame shall be immediately reported to the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ).

2.G.5.e. Effective Date of Vacation

A punishment that has been suspended takes effect on the date the commanding officer orders the suspension vacated.

2.G.5.f. Effect of Vacation

Vacation of a suspension is not a bar to nonjudicial punishment or a court-martial for an offense that formed the basis for the vacation.

2.G.6. Promulgating Orders

An order promulgating the results of trial by SCM is not required.

2.H. REVIEW AND FORWARDING SCM RECORD

2.H.1. Review by Law Specialist

After action by the convening authority, the record shall be forwarded to the legal office of the OEGCMJ over the convening authority for review by a law specialist in accordance with RCM 1112. A review under RCM 1112 is not required in those cases resulting in an acquittal. If upon review the law specialist determines that there is insufficient evidence to support an element of an offense, or if any other corrective action is required as a matter of law, the law specialist should inform the summary court officer and provide an opportunity for the ROT to be corrected pursuant to RCM 1104(d). This notice of the need for correction action should be made to the summary court officer prior to the forwarding of the ROT to the OEGCMJ for any corrective action required by RCM 1112(e).

2.H.2. Review by Chief Counsel on Behalf of The Judge Advocate General

The accused may request review of a final conviction by SCM by the Chief Counsel, on behalf of the Judge Advocate General in accordance with RCM 1201(b)(3).

2.H.3. Forwarding of record

All original ROTs will be forwarded to Commandant (G-LMJ):

- a. When the conviction becomes final pursuant to RCM 1209(a)(2)(A) and Article 76, UCMJ;

- b. When further action by the Chief Counsel on behalf of the Judge Advocate General is required pursuant to RCM 1112(g)(1); or
- c. When the record is authenticated by the summary officer in cases resulting in an acquittal.