

E-PME  *Enlisted*
PROFESSIONAL MILITARY EDUCATION

Judicial and Non-Judicial Proceedings 4.C.02

Learning Objective(s): **EXPLAIN** the rights and responsibility of an enlisted member as they pertain to judicial and non-judicial proceedings.

Why You Need to Know This

As a member of the Armed Forces, you are subject to laws, regulations and military customs that do not apply to the civilian populace. Understanding how these rules may affect you and your subordinates is vital in your role as a petty officer and leader in the Coast Guard. Within all military services there are rights to ensure that enlisted personnel are treated fairly and are given the benefit of due process when conduct or behavior issues arise. Knowing your rights and responsibilities can make a significant difference in the outcome of any judicial non-judicial proceeding.

This lesson will provide you with an overview of your rights and responsibilities as they pertain to judicial and non-judicial proceedings.

Topics Covered

This section will cover the following topics:

- Extra Military Instruction (EMI)
- Uniform Code of Military Justice (UCMJ) Action
- Non-Judicial Punishment
- Courts Martial
- Search and Seizure

At the end of this lesson you will be required to participate in a learning activity. You are encouraged to first review the learning activity and the sign off requirements located in the “**You and Your Supervisor**” section of this lesson. Reviewing this information before you begin the lesson will allow you to take proper notes and focus on key learning points.

Extra Military Instruction (EMI)

Extra Military Instruction (EMI) is:

- Additional instruction in a phase of military duty where an individual is deficient
- Intended for, and directed toward, the correction of that deficiency
- A legitimate training technique to improve an individual's duty performance and efficiency.

EMI is NOT punishment. It may be assigned only if it is genuinely intended to improve performance. It cannot be used as a substitute for judicial (courts-martial) punishment or non-judicial punishment (NJP).

An enlisted member can be directed to:

- Attend EMI for no more than two hours per day
- Attend EMI only for the period of time it takes to correct the performance deficiency for which it was assigned...no longer
- Perform EMI on a day that is not his or her Sabbath.
- EMI must be supervised by a qualified person

Authority to assign EMI performed during normal working hours is not limited to any particular grade or rate, but to a member in a supervisory role.

Authority to assign EMI performed after normal working hours is given to the commanding officer. Authority may be delegated as appropriate.

**Uniform Code of
Military Justice
(UCMJ) Action**

Commanding officers have the authority to take punitive action against members accused of violating the Uniform Code of Military Justice (UCMJ). The Commanding Officer can use non-judicial punishment or, for more serious cases, courts-martial.

Whatever the action, UCMJ Article 31 provides the right of the accused to remain silent throughout the process and to not answer questions or make any statement.

The United States Constitution has many other protections for members accused of a crime. These rights differ according to whether the accused will face a non-judicial punishment hearing or court-martial.

**Non-Judicial
Punishment (NJP)**

Commanding officers have the authority, under UCMJ Article 15, to impose non-judicial punishment (NJP) at captain's mast.

The accused member has the right to:

- Consult an attorney
- Demand trial by court-martial if at a shore command
- Have a mast representative at the NJP hearing
- Be informed of the right against compulsory self-incrimination
- Be informed orally or in writing of the information presented against him or her
- Ensure all relevant information is presented concerning the case
- Request not to appear personally at proceedings held against him or her

A mast representative assists the accused in preparing a defense. If it is practical and reasonable, a requested mast representative should be appointed. The requested mast representative, however, cannot be otherwise involved in the matter that is the subject of the NJP.

Members who receive NJP may appeal in writing to the Commanding Officer's superior if the punishment is "unjust" or "disproportionate" considering the circumstances. If the appeal is not submitted within 5 calendar days after punishment is imposed, the right to appeal is waived.

Non-Judicial Punishment (NJP) (continued)

A member who receives a punitive letter may appeal on additional grounds that a matter raised in the letter is “inaccurate” or “not relevant” to the offense committed or the punishment imposed.

Submitting an appeal will not suspend any punishment awarded. If an appeal has not been acted upon by the Commanding Officer within 5 calendar days of receiving it, however, the member may request that punishments involving restriction or extra duties be deferred until a decision is made on the appeal.

Courts-Martial

A courts-martial is a trial before a military court or judge. In all courts-martials, the accused has the right to:

- Consult with an attorney
- Remain silent and plead not guilty
- Have the court-martial call or subpoena witnesses to testify on behalf of the accused
- Confront and cross-examine all witnesses testifying against the accused
- If found guilty, present mitigating and extenuating circumstances that tend to reduce punishment

General Courts-Martial. A general court-martial consists of a military judge and at least five members.

Special Courts-Martial. A special court-martial consists of a military judge and at least three members.

Summary Courts-Martial. A summary courts-martial consists of one member, ranked LCDR or above. The member does not need to be a judge. The accused member has the right to refuse trial by summary court-martial.

Search and Seizure

Searches and the subsequent seizure of items can be conducted under two different circumstances:

- When probable cause exists
- When probable cause is not required

Members have the right to receive an inventory of any items seized during the search.

**“Probable Cause”
Search and
Seizure**

Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched.

Searchers are not required to obtain a search warrant when the property or evidence may be removed, destroyed, or concealed while searchers wait for the warrant.

**“Probable Cause
Not Required”
Search and
Seizure**

Some types of searches do NOT require probable cause:

- Border searches
- Searches upon entry to or exit from United States installations, aircraft, and vessels abroad
- Searches of government property
- Consent searches
- Searches incident to a lawful stop
- Searches incident to a lawful apprehension
- Searches within jails, confinement facilities, or similar facilities
- Emergency searches to save life or for related purposes
- Searches of open fields or woodlands

In a consent search, members can limit the scope of their consent or withdraw their consent entirely. Authorities would then need some other basis to continue searching.

Learning Activity



To successfully complete this requirement you will need to recall at least **one fact** from each of the **five topic areas** covered in this lesson. From these five facts you must develop five questions and answers. Using the bank template found at the end of this section, **create five flash cards**. These flash cards will be useful to you later as you prepare for the E-PME Advancement Qualification Exam (AQE).

- EMI
 - Uniform Code of military Justice Action
 - Non-judicial Punishment
 - Court-Martial
 - Search and Seizure
-

Sample Flash Card

Example Question:

What type of search does NOT require probable cause?

Answer:

Border searches.

For you and Your Supervisor

In order to meet the sign-off requirement for this lesson **YOU** must:

1. Draft an email message containing your five questions and answers.
2. On the “To” line enter the name of your supervisor (second class petty officer or above)
3. On the “cc” line enter the following address:
D11-PF-TCP-EPME@uscg.mil
4. On the “Subject” line enter the words “JUDICIAL AND NON-JUDICIAL PROCEEDINGS. ”
5. Before sending, review for spelling errors, proper greeting, and proper closing.
6. Send email.

Before signing off on this requirement your **SUPERVISOR** must:

1. Review questions and answers to ensure the information is correct and can be found in the lesson.
2. Review for spelling errors, proper greeting, and proper closing.
3. Provide the member with corrective feedback and answer any questions they may have related to this topic.
4. Sign-off the check-off sheet on the Record of Enlisted Professional Military Education (E-PME) Performance Requirements.

Note: The E-PME Program Manager will review the questions and answers for use as Official E-PME flash cards.

References

The following references were used in this lesson, they can be found at [CG Directives at CG-612](#):

- Coast Guard Personnel Manual, COMDTINST M1000.6 (series)
- Coast Guard Military Justice Manual, COMDTINST M5810.1 (series)
- U.S. Manual for Court Marital (current edition) Part IV Punishment articles.

Later on in Your Career

The EPME course will expand your knowledge on this topic to include topic such as **Mast Representative Responsibilities** and **Preliminary Investigation Officer**.

Blank Flash Card

Question:

Answer:

Blank Flash Card

Question:

Answer: