

Summary Courts-Martial Information

This is a package created to help you understand more about the Summary Court-Martial (SCM) process. Upon completion of reading the materials enclosed, you will have a greater understanding about:

- Creation of the SCM
- SCM officer: what they are and what they do
- Maximum punishment delegated at SCM
- Final pretrial preparation

However, before we begin explaining about the intricacies of SCMs, you need to know and understand why you are facing a SCM. Obviously, someone has accused you of violating the Uniform Code of Military Justice. The supposed infraction was not serious enough in nature to warrant a court-martial where you could receive either a Bad Conduct Discharge (2nd worst characterization of service) or a Dishonorable Discharge (worst characterization of service); however, it was serious to rate punishment that results in brig time, loss of rank, pay and liberty.

The SCM is the least formal of the three types of courts-martial and the least protective of individual rights. The SCM is a streamlined trial process involving only one officer who theoretically performs as the prosecution, defense counsel, judge and jury functions. The purpose of a summary court-martial is to dispose promptly of relatively minor offenses. The one officer assigned to perform the various roles of the SCM officer must inquire thoroughly and impartially into the matter concerned to ensure that both the United States and the accused

receive a fair hearing. Since the SCM is a streamlined procedure, the maximum punishment that may be imposed is very limited. Furthermore, a SCM is only for enlisted personnel who consent to be tried by SCM.

Creation of the Summary Court-Martial

The authority to convene SCM's is vested in the office of the authorized command and not in the person of its commander. Thus, "Colonel Bill," USMC, has SCM convening authority only while actually performing as Commanding Officer, Headquarters and Headquarters Squadron. The power to convene SCM's is not delegable and in no event can a subordinate exercise the authority to convene a SCM.

Summary Court-Martial Officer

A SCM is a one-officer court-martial. As a jurisdictional prerequisite, this officer must be a commissioned officer, on active duty and of the same armed force as the accused. (The Navy and Marine Corps are the same armed force for these purposes) Where practicable, the officer's grade should not be below O-3. As a practical matter, the SCM should be qualified by reason of age, education, experience, and judicial temperament as his performance will have a direct impact upon the morale and discipline of the command. Where more than one commissioned officer is present within the command or unit, the convening authority may not serve as SCM. When the convening authority is the only commissioned officer in the unit, however, he may serve as the SCM officer and this fact should be noted in the convening order attached to the record of trial.

Maximum Punishment Delegated at Summary Court-Martial

E-4 and below:

- Reduction to lowest pay grade (E-1)
- Forfeiture of 2/3 of one month's pay for (convening authority may apportion collection over three months)
- Confinement not to exceed one month
- Hard labor without confinement for 45 days (in lieu of confinement)
- Restriction to specified limits for 2 months

E-5 and above:

- Reduction to next inferior pay grade
- Restriction to specified limits for two months
- Forfeiture of 2/3 of one months pay (convening authority may apportion collection over three months)
- *Cannot* be sentenced to confinement or hard labor without confinement even if a reduction to E-4 has also been adjudged

Final Pretrial Preparation

Gathering Evidence and Witnesses: At the conclusion of the pretrial interview, the SCM officer shall give the accused a reasonable period of time to decide whether to object to trial by SCM. The SCM officer should obtain from the accused the names of any witnesses or the description of any evidence, which the accused wishes to have presented at the trial. He should also arrange for a time and place to hold the trial. These arrangements should be made through

the legal officer and the SCM officer should ensure that the accused and all witnesses are notified of the time and place of the first meeting.

The SCM officer has the duty of insuring that all relevant and competent evidence in the case, both for and against the accused, is presented. It is the responsibility of the SCM officer to insure that only legal and competent evidence is received and considered at the trial. The Military Rules of Evidence apply to the SCM and *must be followed*.

You need to make sure that you have all of the evidence for the trial. This includes witnesses you will be calling and character letters. Character letters are an important part of your defense. It is likely that if you have several individuals come in and say great things about you, then your punishment will be lessened. If someone cannot appear the date of the trial, then have him or her write a character letter and submit that the day of the trial.

Lastly, prepare for any possible brig time you will be awarded. It is important that you have your finances in order, to include bills, child care, etc... Aside from the fact that bills need to be paid, doing this will make you look more responsible.

1. What lawyer rights does the accused have at a summary court martial?

Military Counsel. The accused does **not** have the right to have a military lawyer assigned, or detailed, to his summary court martial. However, the detailing authority may, in his/her discretion, make a military defense counsel available to represent the accused. (The detailing authority is typically the senior defense counsel in the area. It has been historically very unlikely that the detailing authority chooses to assign a defense counsel to a summary court, since their time is consumed by representing defendants at administrative discharge hearings, Boards of Inquiry, and special and general courts-martial, at which defense counsel are required by law.)

Civilian Counsel. The accused may obtain qualified civilian counsel at his own expense, and such counsel "shall be permitted to represent the accused at the summary court-martial if such appearance will not unreasonably delay the proceedings and if military exigencies do not preclude it." R.C.M. 1301(e) The determination of the reasonableness of such delay and the existence of a military exigency are made by the court, and is subject to legal review on appeal.

2. Do the military rules of evidence and procedure apply to a summary court-martial?

Yes. The military rules of evidence, MCM Part III, apply to summary courts [R.C.M. 1304(B)(2)(e)]. Military rules of procedure, MCM Part II, also apply to summary courts, unless exempted. [R.C.M. 101(A)]

The rules for trial by court-martial are vastly different and generally far more stringent than rules for non-judicial punishment, competency review boards, Boards of Inquiry, or administrative discharge hearings. The accused has far greater rights to the personal attendance of witnesses on his behalf, particularly in the determination of guilt/innocence. Documents may be considered only when doing so complies with the military rules of evidence. Witnesses must be personally present at trial to testify; written statements and law enforcement agency reports are generally inadmissible.

3. What is the last point at which the accused can object to trial by Court Martial?

The summary court martial officer should conduct a preliminary hearing advising the accused of his rights, the nature of the charges, and other information as indicated at Rule for Court Martial 1304(b) (1). The court can ensure proper advice by reading the script at appendix 9 (contained herein) of the Manual for Court-Martial. After completing the preliminary proceeding, the Court shall give the accused a reasonable period of time to determine whether to accept trial by summary court-martial. If the accused consents to trial by summary court-martial, he may change his mind and object thereto at any time prior to arraignment.

Rule for Court-Martial 1303 provides that "No person who objects thereto *before arraignment* may be tried by summary court-martial, even if that person also refused punishment under Article 15 and demanded trial by court-martial for the same offenses." (Emphasis added)

Arraignment is the taking of the accused's pleas to the charges.

4. What witnesses is the accused entitled to?

On the merits. In the determination of guilt or innocence, the accused can request the presence of witnesses on his behalf. Particularly, but not exclusively, if the witness requested does not reside in the local area, the Court should require that the accused identify the requested witness' name, address, and phone number. Furthermore, the accused should provide a summary of what he expects that witness to say, and why he thinks the witness will say those things (E.g., based on a written statement provided by the witness, or a telephone conversation). If the Court concludes that the testimony is relevant and necessary that witness must be produced, or else the court-martial cannot reach its conclusion, *regardless of the expense or difficulty in procuring the witness* (If there are multiple charges and specifications, the court may proceed on those charges and specifications concerning which the witness has no relevance.) R.C.M. 703(b).

In sentencing. In determining an appropriate sentence, the accused's right to the production of requested witnesses is far more restricted than on the issue of guilt or innocence. The Court must determine whether the significant of the personal appearance of the witness to the determination of an appropriate sentence, when balanced against the practical difficulties of producing the witness, favors production of the witness. In making this determination, the Court should consider a number of factors, including, but not necessarily limited to, the following: cost of producing the witness, timeliness of the witness request, potential delay involved in producing the witness, the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training. R.C.M. 1001(e)

5. What evidence can be considered in determining an appropriate sentence?

In determining an appropriate sentence, the Court may consider:

Prosecution Evidence:

1. Service data from the heading of the charge sheet; e.g., date of enlistment, date of birth, prior service;
2. Personal data relating to the accused's and the character of the accused's prior service, as reflected in personnel record of the accused; e.g., properly recorded page 11 or 12 entries;
3. Evidence of prior conviction, military or civilian, where documented by legally admissible evidence;
4. Evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty; e.g., harm to the victim or to unit readiness;
5. Evidence of rehabilitative potential, typically from written statements or testimony from the accused's supervisors. The witness may express an opinion as to rehabilitative potential, or lack thereof.

Defense Evidence:

1. Evidence in extenuation; matters surrounding the offense which explain the circumstances, but do not amount to a defense; e.g., the accused sees his wife insulted publicly, and therefore commits an assault on her tormentor.
2. Evidence in mitigation; i.e., evidence concerning the accused's dedication to duty, efficient performance, bravery, or other trait that is desirable in a service member.
3. The accused may make an oral or written statement, sworn or unsworn, or may remain silent. If the accused chooses to remain silent, or to make an oral or written unsworn statement, the accused cannot be cross-examined thereon.
4. The Court may, and probably should, be very liberal in allowing the accused to submit documents on his behalf during sentencing. The Court may relax the rules of evidence in order to receive documents in extenuation and mitigation; e.g., character statements from supervisors on behalf of the accused. These rules should be relaxed to the same degree to allow the prosecution to rebut the accused's extenuation and mitigation evidence. R.C.M. 1001(c).

The Court should not admit or consider any recommendations for a particular sentence. Thus, testimony by a witness or a written statement asking the Court to reduce the accused in rank, or to refrain from reducing the accused in rank, is inappropriate.

6. What is the maximum punishment authorized at a summary court-martial?

For accused persons in pay grades E-4 and below, the court may adjudge thirty days confinement, reduction to E-1, and forfeiture of 2/3 pay per month for a period of one month. Any sentence of forfeitures must be expressed in whole dollar figures, with the maximum authorized based on the rank to which the accused is reduced, if reduction is also adjudged. In lieu of confinement, the court may adjudge up to a maximum of forty-five days hard labor without confinement and sixty days restriction to specified limits. (See also FAQ regarding the combination of restraint type punishments)

For accused persons in the rank of E5 and above, the court may adjudge reduction to the next lower pay grade only, and forfeiture of 2/3 pay per month for one month. As with more junior enlisted accused's, any sentence to forfeitures must be expressed in whole dollar figures, with the maximum authorized based on the rank to which the accused is reduced, if reduction is also adjudged.

7. What are the rules concerning combinations of restraint type punishments such as confinement, hard labor without confinement (a.k.a. extra duties), and restriction?

The maximum authorized length of restriction is sixty (60) days. The maximum authorized length of hard labor without confinement is forty-five days. If the sentence of the

court does NOT also include confinement, the accused may be sentenced to **both** sixty days restriction and forty-five days hard labor without confinement, or any lesser period of such punishments.

However, if any amount of confinement is adjudged, the maximum punishment can not exceed thirty days confinement, given the following table of equivalent punishments:

1 day of confinement equals 1.5 days of hard labor without confinement or 2.0 days of restriction.

Example: The court sentences the accused to 20 days confinement.

Therefore, the 10 confinement units remaining may be split among restriction and HL w/o confinement. Thus, the accused may be sentenced to 20 days restriction (10X 2) OR 15 days HL w/o confinement (10 X 1.5) but not both. If the court wants to sentence the accused to both HL w/o confinement and restriction, any combination may be made, so long as it does not exceed ten confinement units, e.g., 8 days restriction (using up four of the ten confinement units) and 9 days HL w/o confinement (using up the remaining six confinement units).

8. What are forfeitures and what are the rules pertaining to them?

A sentence of forfeitures reduces the accused's pay as it comes due. For example, a sentence to forfeit \$400 per month for a period of one month results in a diminution of the accused's pay for the next month by \$400.

The maximum authorized forfeiture is an amount equal to two-thirds of the accused's base pay for a period of one month. The sentence of forfeitures must be expressed in whole dollar figures rather than fractional shares.

Furthermore, the maximum authorized forfeiture is computed based on the rank to which the accused is reduced (even if the reduction is later suspended) if a reduction is also a part of the Court's sentence.

Unless deferred by the convening authority, at the request of the accused, forfeitures are executed when the convening authority takes action on the case or fourteen days after the date the sentence is announced, whichever comes first.

9. What is a fine? Can a summary court sentence include a fine?

A fine directs the accused to pay the amount of the fine immediately. Unlike forfeitures, a fine is not an authorized punishment at a summary court-martial.

10. What is correctional custody? Can a summary court sentence include correctional custody?

A correctional custody facility provides a boot camp type environment where the accused can be re-taught such matters as grooming, military courtesy, and self-discipline. Assignment to

such a facility can be directed as part of Article 15, nonjudicial punishment. However, it is not an authorized punishment at a summary court-martial.

11. Can a summary court-martial suspend any punishments?

The officer conducting the summary court martial has no authority to suspend any punishment.

The officer conducting the summary court-martial can only *recommend* that the convening authority suspend a portion of the sentence, a recommendation that the convening authority is obligated to consider, but not necessarily agree with. The Court may indicate its recommendation at block 9 of form DD 2329 or in a separate letter to the convening authority.

In taking action on the case, the convening authority may suspend all, or any portion of the unexecuted sentence

12. When does the accused actually begin to serve the sentence of the court?

Confinement. A sentence to confinement is executed immediately after announced by the Court. Unless properly deferred, each day following the date the sentence is announced will be credited against the sentence to confinement-regardless of whether the accused is actually in jail.

Forfeitures/Reduction in Grade. Those portions of the sentence extending to forfeitures or reduction in grade are effective at the time the convening authority takes action on the case, or fourteen days after sentence is announced, whichever is earlier.

Restriction, Hard labor without confinement, Reprimand. These punishments may be served only after the convening authority takes action on the case.

13. Can a sentence to confinement be delayed? How?

In some cases, the convening authority may want the accused to serve the sentence, but may desire that the sentence be delayed, or deferred. For example, the convening authority may desire that confinement be deferred to allow the accused to attend the birth of a child, or to take care of some emergency.

The convening authority can defer the execution of a sentence, but only at the request of the accused. The deferment request, as well as the response thereto, should be in writing and included in the record of trial. The convening authority action should, at block 13 of DD Form 2329, should also contain language concerning the consideration, granting, or denial of a deferment request.

CHARACTER REFERENCE

_____ is presently facing an Administrative Discharge or Court-Martial. He/she has provided your name as a reference to his/her good character. It is requested that you provide a letter describing your personal observation and opinions concerning this service member. Below is a general outline for a character reference. This is an outline of what should be covered in your letter. More may be added if appropriate. While the basic format should be followed, the words should be your own so that each character reference is unique.

I Who are you? The first paragraph should tell the reader who you are by relating the following information

- a. If you are a member of the armed forces state:
 - 1. Your name, rank, and branch of service
 - 2. How long have you been in the service
 - 3. The various jobs you have held while in service
 - 4. Your present billet
 - 5. The responsibilities of your present billet
 - 6. How many Marines/Sailors you currently supervise
 - 7. How many Marines/Sailors you have supervised over your course of time in the service
- b. If you are a civilian state:
 - 1. Your occupation
 - 2. The responsibilities of your job
 - 3. The number of people you supervise
- c. If you are presently a civilian but are a former service member, please cover both a and b.

II. How you know this Marine/Sailor? The second paragraph should state how you know the marine or Sailor you are writing about.

- a. If this Marine/Sailor works with you, state:
 - 1. The Marines/Sailors billet
 - 2. His/her duties
 - 3. Your professional relationship to him/her ie., supervisor
 - 4. How long he/she has worked for you
 - 5. How often you observe him/her
- b. If you saw this Marine/Sailor outside the workplace, state:
 - 1. When you would see him
 - 2. What you would observe him do
 - 3. How often you saw him

III. Your opinion of this Marine/Sailor This paragraph should strongly state that the individual is a good Marine/Sailor

- a. If you are a Marine/Sailor or former Marine/Sailor state:
 - 1. The quality of work he has done for you
 - 2. His military character
 - 3. How you would rate him compared to others holding the same billet
- b. If you are a civilian state:
 - 1. The kind of work he has done (if observed)
 - 2. His character
 - 3. How you compare him/her to other individuals (not necessarily Marines or Sailors)

IV. The problem. You need to briefly state your knowledge of the trouble

- a. One sentence should briefly state your knowledge of the trouble
- b. The very next sentence should state that these problems do not change your opinion of him.

V Conclusion. Tell the reader what you would like to see happen

- a. If the Marine/Sailor was from your unit, say whether you would like to have him back; in the case of administrative discharge boards, whether you would like to see him retained or, in the alternative, what type of discharge he rates
- a. If you are a civilian, state whether you would like to see this individual retained in the Marine Corps/Navy

Please omit any areas not relevant to your relation to this Marine/Sailor and add any information you believe would help.

If possible, these statements should be typed, dated and signed, and returned no later than _____.

If typed statements are not possible, legible hand written statements are acceptable.

SAMPLE LETTER

To Whom It May Concern:

My name is Charles Benotz. I am a Master Sergeant in the United States Marine Corps. I have been in the Marine Corps for twenty years. While in the Corps, I have held numerous billets, including thumping recruits, chewing beer can, and swallowing broken glass. Presently, I am the SNCOIC of the ammunition reclamation division. My responsibilities include digging for live ammo on the firing range, acting as a running target, etc. I presently supervise 20 Marines and their numbers are decreasing each day. Over the course of my career I have supervised close to 50,000 Marines and Sailors.

I know LCpl Schmucatelli because he used to work for me in hazardous and toxic waste reclamation. In that capacity, he was our drum guzzler. His duties included tasting hazardous waste to determine its chemical composition. During that time I was his NCOIC. He worked for me for 2 years in that billet before he was transferred due to medical problems. During the time he worked for me however, I was able to observe his performance daily and it was exemplary.

My opinion of him is that his work was outstanding. He had excellent military character, and I would rate him in the top 10% of all Marines who have held that same billet. He never choked or gurgled, and maintained a consistently positive attitude even when his hair was falling out or when he went blind.

My understanding is that he is presently facing a special court-martial for assaulting another Marine. From what I understand, it was because he was preoccupied with his past deployment to Southwest Asia and his impending deployment to Somalia. Whether he actually did this would not change my opinion as to his excellent military character.

While he was in my unit, he performed exceptionally. I believe that he could be an excellent asset to the Marine Corps, as his performance was nothing less than Honorable. Furthermore, I believe that he should not receive a punitive discharge, in part because he has risked his life for his country, unaware of the fate which awaits him, and is ready to spill the blood of our nations enemies in a land far away from home.

Sincerely,

MSgt Benotz

SAMPLE PERSONAL STATEMENT FOR COURT-MARTIAL

To Whom It May Concern:

My name is Sergeant Joe Smith. I am the son of Karen and Bob Smith. When I was a child I grew up in Texas. My family and I moved to Rhode Island in 1990 when my dad was transferred. I graduated from high school in 1996 and decided to enroll in college. As my first year of college ended, my parents fell on hard times and I had to leave school in order to support my family. I worked at Outback Steakhouse for a time and then I got a job at Rolland Oil Field Services.

As the summer of 1999 was ending, I realized that I did not know what I wanted to do with my life. I looked to my older sister and brother guidance and inspiration. My sister graduated from Arizona State University and was pursuing a career. My older brother joined the Army and was a Ranger with the 82nd Airborne. I saw the effect that the military had on my brother and decided that I wanted to be a Marine. I went to the recruiting station next to my house and I spoke to a recruiter. I was very impressed by my recruiter and decided to enlist. My recruiter told me later that when I walked into her office she never expected me to enlist; I did and it changed my life forever.

I enlisted in the Marine Corps in October of 1999 and was shipped off to MCRD San Diego. While I was in boot camp I did not excel. I would say that I was an average recruit. After recruit training I went to MCT where, once again, I did not excel. I was an average Marine. I then reported to Camp Johnson, North Carolina for my MOS school. I graduated from my MOS school at the top of my class and I received a certificate of commendation.

I volunteered to go to Okinawa after MOS school. In Okinawa I held the billets of CMR Chief and MAL Chief. These billets are usually held by an NCO or higher. I PCS'd from Okinawa to MCRD San Diego. I was assigned to 2nd Recruit Training Battalion as an S-4 clerk. I was promoted to Corporal and then Sergeant while at MCRD. As a Sergeant I held the billet of S-4 Chief, which is a billet normally held by a Gunnery Sergeant or higher. I received a Navy and Marine Corps Achievement Medal from Second Recruit Training Battalion for my tour at MCRD. After two years at MCRD, I received orders to Yuma.

While serving at Yuma it came time for me to reenlist. I decided to pursue a career in the Marine Corps and reenlisted in 2001. I served as a S-4 Chief at Yuma with H&HS for two years. In 2003 I volunteered to deploy to Iraq and was sent to I MEF as an individual augment.

Once I checked into MEF, I was put on the first plane to Iraq. Ramadi would be my home for the next year. I was initially attached to 2/4, Golf Company where I started to learn what my new job would entail. I was part of a provisional rifle platoon providing security at 2/4's operating base. Once 2/5 and 1/5 arrived and did a relief-in-place with

2/4, the real work began. I began to support the rifle platoons directly and would augment them on patrols and combat missions. In the year that I was there, I supported over 250 combat operations. These operations included raids, patrols, and other combat duties received Navy and Marine Corps Achievement Medal with V designator from Second Battalion Fifth Marines for my service in Iraq.

I hope that the above background information explains how I found myself in Iraq performing the duties I was performing when the offenses in this case arose. I will now endeavor to explain my guilty pleas in this case. I offer no excuses for my violations of the UCMJ, but hope to provide some context for my actions for your consideration.

I am pleading guilty to violating Article 107 of the UCMJ for making a false official statement. After being in Iraq for over 10 months, I was brought in by NCIS for questioning concerning the importation of illegal drugs. NCIS began to question me about conversations I had with an Iraqi citizen regarding the importation of MDMA or ecstasy into Iraq. I initially denied that I had participated in any such discussions because I thought that the NCIS agents couldn't be serious about their allegations. I couldn't believe that what I considered to be a harmless joke at the expense of the Iraqi man who ran a souvenir stand on our base had been taken so serious by NCIS. I had entered into a dialogue with this man and convinced him that I was able to import an unbelievable amount of MDMA for him to sell. I thought that the terms I was proposing to him were preposterous and couldn't believe that he thought I could actually deliver on my proposal. I was amused by the dialogue because I knew that he believed I was going to make him a very rich drug dealer. I carried on with this man because it amused me to see him so intrigued by my proposal. It was a distraction for me from the stressors of the life I was living in Iraq. I was never charged with actually trying to import MDMA into Iraq; it was never going to happen. However, the Iraqi man reported the conversations to NCIS. Once the investigators told me the seriousness of the situation, I immediately cooperated with them, admitted that I did have a dialogue with the Iraqi national about MDMA and explained to them that it was a joke I was playing at the man's expense. Nevertheless, I did initially deny the conversations to NCIS. While I admitted to them within minutes of my initial denial that the conversations took place, I must take responsibility for my initial denial.

I am also pleading guilty to a violation of Article 112a of the UCMJ for wrongfully using marijuana. When I returned from Iraq I was depressed about the things I had seen there and turned to abusing alcohol. One night I was out drinking with friends and a civilian offered me a marijuana cigarette. I took the cigarette and smoked it for a few minutes. I know what I did was wrong and I freely admit my mistake. I know that I have no excuse for violating the UCMJ and Marine Corps policy concerning drug use. I'm sorry for what I did and want to accept responsibility for my actions.

Prior to this case, I had accepted orders to go to recruiting school. My Marine Corps career was going very well. I believed I was on my way to a long and successful time in the Marine Corps and expected to progress through the ranks in the years to come. I now know that my actions will have a significantly negative effect on my career in the Marine

Corps and may even force me out of the Marine Corps. I am very regretful for what I have done.

I would like to continue my Marine Corps career if given the opportunity. I know that I can overcome this hurdle. I know that I may be reduced in rank by this proceeding, caused to forfeit monies and even placed into confinement. I also know that I will be ineligible for promotion for some time and less competitive for promotion when I am eligible. However, I believe that I can still contribute to the Marine Corps. I have made mistakes and I feel that if given the chance to prove myself again I will. I am still a valuable asset to the Corps and will continue to make contributions in any way that I can. If I am not allowed to continue my career in the Marine Corps, I hope to get started on my civilian life as soon as possible. I want to get started on college and pursue a degree in business. I hope to own my own business someday. I will also need to find civilian employment as soon as possible. I am married and have a two-year-old daughter, Marissa. My wife's income alone is not sufficient to support us.