

I've been accused of a crime under the UCMJ, now what?

If you are a Marine or Sailor attached to a Marine Corps command and find yourself in need of a defense attorney, you can trust that the DSO is prepared to zealously, ethically and effectively advocate on your behalf. This information paper provides a brief explanation of the possible events that may be in your future as an accused. There are several different avenues that military authorities can pursue when prosecuting military crimes. If you are a Marine accused of a crime, how your case proceeds will depend in large part upon the severity of the allegations, the specific facts, and the strategy of the government and defense counsel. If you rate an attorney detailed to your case, your attorney will provide you with more information pertinent to your specific situation, including what could happen during and after the proceeding.

After discovery of alleged misconduct by military authorities, one or more of the following may occur:

Investigation: After your command learns of an alleged act of misconduct, they will normally initiate an investigation. This investigation may be handled internally, or with the assistance of law enforcement. Your command, the military police, or an investigator may attempt to question you; however, under Article 31(b) of the Uniform Code of Military Justice (UCMJ), you are not obligated to answer any questions that would cause you to incriminate yourself and you have the right to request the presence of a defense attorney present during the questioning.

Preferral of Charges or Notification of Administrative Separation Processing: Upon discovery of a suspected violation of the UCMJ and completion of an investigation, a commanding officer, referred to as the Convening Authority or CA, can direct the "preferral" of charges. Preferral of charges is a formal act comparable to a civilian indictment and starts the trial process going forward. If the CA decides that the alleged misconduct does not rise to the level of a trial but may warrant separation from the Naval Service, he or she may direct that you face an Administrative Separation Board. Preferral and notification of being processed for administrative separation when you rate a board are both significant legal moments, because they are the first time you have the right to a detailed defense attorney.¹

The Proper Forum for the Charges: The Convening Authority will determine the course of action and choose a forum for the alleged misconduct. The Convening Authority's options vary in complexity, the rights that they afford the accused, and the severity of possible punishments.

Depending on how the Convening Authority elects to proceed, the accused may be subjected to one of the following proceedings:

- **Non-Judicial Punishment (NJP):** NJP is a form of punishment authorized under Article 15 of the UCMJ. NJP allows commanders to reprimand subordinates for conduct without having to engage in the court-martial process. Marines must elect to accept NJP. Should a Marine decline to accept NJP, the commander may elect to take that Marine to a court martial. The possible punishments under NJP are dependent upon the rank of both the commander and that Marine who allegedly committed the misconduct. Please refer to our NJP Information Sheet for more information.
- **Administrative Separation (AdSep):** Individuals may be separated administratively from the Navy and Marine Corps for numerous reasons, to include weight control failure, unsatisfactory performance

¹ If you are not in pretrial confinement, you are entitled to an attorney when charges are preferred. If you are in pretrial confinement, an attorney will be appointed to you before (1) a hearing on whether or not to continue to hold you in pretrial confinement, (2) within 72 hours of your request for counsel, or (3) within 10 days of your initial confinement date if you are not released.

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and misconduct. As part of the administrative separation process, Marines and Sailors may be entitled to a hearing in front of a board consisting of one field grade officer and two additional members who may be officers of any rank or an enlisted in the rank of E-7 or higher (e.g. 3 officers or 2 officers and an enlisted). During deliberations, the board will first determine if the basis for separation is met. If the basis is met, they will recommend whether or not retain the Marine or Sailor and, if separated, the characterization of their service. Marines and Sailors are entitled to be represented by defense counsel before the board.

- **Court-Martial:** There are three types of courts: the summary court-martial, the special court martial, and the general court-martial. These courts vary in both the degree of “due process” given to the accused and the maximum punishment permissible if found guilty of an offense.
- **Summary Court-Martial** – This is lowest form of court-martial and is normally used for relatively minor offenses. Summary courts-martial lie somewhere between NJP and special courts-martial. A summary court-martial is not considered a criminal trial and normally does not result in a criminal conviction for the purposes of civilian records. Service members are not entitled to government-funded military lawyers in this forum. The rules of evidence apply at a summary court-martial and service members have the right to cross-examine witnesses. Importantly, service members can refuse summary courts-martial. Those who refuse a summary court-martial will likely face a special court-martial instead. The maximum punishment available at a summary court-martial is:
 - Confinement for up to 30 days (for E-4 and below only), Restriction for up to 60 days, or a combination of the two;
 - Forfeiture of up to 2/3 pay for one month; and
 - Reduction for E-4 and below to E-1 / Reduction for E-5 and above: 1 pay grade
- **Special Court-Martial** – Many liken the special court-martial to a civilian misdemeanor court. At a special court-martial, an accused has the right to a detailed active duty military lawyer, an active duty military lawyer of his own choice if that counsel is available, and a civilian military lawyer. He can request trial by officer members, members with at least 1/3 enlisted members, or trial by judge alone. Trial by members is comparable to a jury trial. The maximum punishment available is:
 - Confinement for up to 12 months;
 - Forfeiture of 2/3 of their pay for up to 1 year,
 - Reduction to pay grade E-1; and
 - A Bad Conduct Discharge.
- **General Court-Martial** – This is the most serious court-martial and is similar to a civilian felony criminal trial. General officers convene general courts-martial (GCMs) after cases undergo Article 32, UCMJ investigations. GCMs have the authority to award any punishment that is permissible under the law to include confinement for life without the possibility of parole or even the death penalty in cases when authorized. Additionally, GCM punishments can include total forfeitures of pay and allowances, a fine, reduction, and/or a Dishonorable Discharge.

For a more detailed look at how the different processes progress and are inter-related, please refer to the flowchart that is available as a handout at our Branch Offices or at www.hqmc.marines.mil/DSO/Resources.aspx.

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