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## **What is a Summary Court-Martial?**

The Summary Court-Martial is the least severe and least formal of the three types of courts-martial. It is used to dispose of minor offenses and is often negotiated as part of a pre-trial agreement. It is a streamlined trial with one officer functioning as prosecutor, defense counsel, judge, and jury. The SCM officer must thoroughly and impartially inquire into all aspects of the matter and ensure that the interests of both the Government and the Accused are safeguarded and that justice is served. The SCM is not simply a rubber stamp for a commander.

## **Why was I picked?**

The officer designated by the convening authority should be of even temperament and further qualified because of age, education, training, and experience. The officer should be of the same service of the Accused, but need not be of the same unit. Where practicable, the officer's grade should not be below O-3. Because he or she fills a "judicial" role, the SCM officer should carefully and thoroughly prepare for trial and execute his duties in an impartial manner. Care should be taken in selecting the SCM officer because his or her performance will have a direct impact on morale and discipline of a command. The SCM officer need not be a lawyer, but may seek advice from a judge advocate on questions of law. The SCM officer may not seek advice on questions of fact, as he or she has duty to make an independent determination of the facts.

## **What is the maximum punishment that can be imposed at a SCM?**

1. Confinement for 30 days (only for E-4 and below)
2. Reduction to E-1 (E-5 and above can only be reduced ONE pay grade)
3. Forfeiture of 2/3 pay for one month. If the sentence includes reduction, the forfeiture must be at the reduced rank's pay.
4. Restriction. If the sentence does not include confinement, 60 days restriction may be imposed. If the sentence includes confinement, see R.C.M. 1003(b)(5) and contact a trial counsel prior to awarding restriction and confinement.
5. Hard Labor without confinement (only for E-4 and below). Hard labor is like EPD, except it cannot be done on Sundays and it is not limited to two hours per day. The length of time per day must still be reasonable. The SCM officer does not specify the labor to be performed. If the sentence does not include confinement, 45 days Hard Labor may be awarded. If the sentence includes confinement, see R.C.M. 1003(b)(7) and contact a trial counsel prior to awarding hard labor and confinement.

## How do I prepare for the SCM?

**Step 1:** Review the package provided to you by your legal officer to ensure it is complete and correct. Ensure you read and understand all forms before providing them to the accused. You should have the following items in your package:

\_\_\_\_\_ **The Charge Sheet: DD Form 458.** You should have the original or a certified true copy. These are **the only charges that you can consider at the SCM.**

\_\_\_\_\_ **The Convening Order.** You should have the original or a certified true copy. This is what appoints you as the SCM officer. A notation in the referral block of the charge sheet may take the place of a convening order.

\_\_\_\_\_ **The Pre-trial Agreement.** If your case began as a Special Court-Martial, you may have a pre-trial agreement. If there is no PTA, check with your legal officer to ensure that your case originated as a SCM and not a SPCM.

\_\_\_\_\_ **The Investigation or Evidence Package.** This should provide you with enough information to get the who, what, when, and where of the charged offenses.

\_\_\_\_\_ **The Guilty Plea Inquiry.** These are sample questions that are offense specific. You should use them as a guide and ask them to the accused prior to accepting his guilty plea.

\_\_\_\_\_ **The Accused's SRB.** This is for your review.

\_\_\_\_\_ **DD Form 2329: Record of Trial by Summary Court-Martial.** This must be completed by you after the summary court-martial.

\_\_\_\_\_ **DD Form 2704: Victim/Witness Form.** This must be completed for all cases in which confinement is adjudged. The brig will not accept a servicemember without this form.

\_\_\_\_\_ **Summary Courts-Martial Acknowledgement of Rights Form.** This apprises the accused of all his rights at a summary court-martial. You will need to fill in the blanks on page 2 of the form, for the maximum confinement and forfeitures that could be adjudged if the case were at a Special Court Martial. You can find this information in the Manual for Courts-Martial under the specific offense charged. You should write in the accused's name on page 1 and have the accused sign this form in your presence prior to beginning the SCM. You will then sign page 3 as a witness.

\_\_\_\_\_ **Addendum to NAVMC 118.** These are the accused's Booker rights. You must have the accused sign this prior to beginning the SCM. Ensure that the accused circles the appropriate words in this form.

\_\_\_\_\_ **Summary Court Martial Trial Guide.** This is the script that you must follow during the court-martial. Fill in the answers of the accused as the trial progresses.

\_\_\_\_\_ **Results of Trial Letter.** This is a letter written by you to the Commanding Officer. This is sent to the CO as soon as you finish the trial.

\_\_\_\_\_ **Acknowledgement of R.C.M. 1105 Rights Form.** This informs the accused of his right to submit written matters to the Convening Authority within 7 days of the announcement of sentencing. The accused should circle whether he intends to waive or execute his right to submit matters. If the accused intends to waive his right, he should fill out and sign the Waiver of Right Letter. You will sign as the witness.

\_\_\_\_\_ **Service of the Record of Trial Form.** This form documents your service of the Record of Trial upon the accused. You should give the accused a copy of the completed DD Form 2329.

\_\_\_\_\_ **Written Summary.** You must type up a summary of the proceedings. Included in this package are samples to go by.

**Step 2:** Locate and Review your Legal References. Borrow your legal officer's Manual for Courts-Martial (2002 Edition or most recent edition) and read the following sections:

- Chapter XIII of the Rules for Courts-Martial (Summary Courts-Martial) found at page II-177
- The applicable Punitive Articles of the UCMJ that have been charged found at part IV
- Chapter X of the Rules for Courts-Martial (Sentencing) found at page II-122

**Step 3:** Substantively Examine the File. Examine the package provided by your legal officer. The primary goal is to identify the witnesses to be produced at trial and identify any errors in the convening order or charge sheet.

- **Examine the Charge Sheet and Convening Order.** You may make minor corrections to the paperwork, such as spelling changes, at this stage. Initial and date all corrections. If you feel that there are substantive changes needed, contact the trial counsel identified in Block 11 of the charge sheet.
  - Ensure accuracy of all information in Blocks 1-9.
  - Ensure name and rank are correct in each specification.
  - Compare the specification with the elements of the offense in the UCMJ, ensure each element is listed in the specification. If any elements are missing, do not add them in—contact the trial counsel identified in Block 11 of the charge sheet.
  - Ensure Blocks 11-13 are not blanks. Note that the officer who swears the Accuser to the charges is the trial counsel assigned to the case.
  - Ensure in Block 14 that the case has been referred to a Summary Court-Martial.
  - If Block 15 has been completed, ensure that the date of service is not before the date of referral. If the charges were served prior to the referral to the summary court, you will need to re-serve the charges on the accused prior to the SCM.
  - The Convening Order: make sure that all information is correct and that the Order has been signed by the CO or someone acting as the CO.
- **Examine the Pre-Trial Agreement**
  - Check that the name, rank, and SSN of the accused are correct
  - Ensure that all charges on the charge sheet are listed in Paragraph 6.
  - Is the accused pleading guilty to all the charges? If not, check with the trial counsel to see if the convening authority wants you to try the charges to which the accused is

pleading not guilty or simply dismiss the charges once you have accepted the accused's guilty pleas to the other charges.

- Ensure that the PTA has been signed by all parties
- **If there is no Pre-Trial Agreement**—speak with the accused prior to the court-martial to find out if he is pleading guilty. If he is pleading not guilty, speak to the trial counsel identified in Block 11 of the Charge Sheet.

## **PRE-TRIAL MEETINGS WITH THE ACCUSED**

You must have at least one pre-trial meeting with the accused. If the accused is pleading not guilty, you should have two meetings. The meetings can take place in any quiet room where you will not be disturbed.

- **First Meeting with the Accused—Meet and Greet**
  - Identify yourself to the accused as the Summary Court-Martial Officer
  - Serve the accused by providing the accused with a copy of the charge sheet and convening order—once you have done this, sign Block 15 of the Charge Sheet. (If block 15 is already signed, then skip this step).
  - Tell the accused about the process in general and your role in it—advise the accused that you need his assistance in gathering all the evidence.
  - All the accused to examine the evidence.
  - Provide the accused a copy of the Summary Courts-Martial Rights Form and tell him to read it over and bring it to the Preliminary Proceeding.
  - Ask the accused if he plans to plead guilty or not guilty.
  - Inform the accused of any witnesses you intend to call at the trial (if the accused is pleading guilty, there may not be any witnesses)
  - Ask the accused if he wants any witnesses produced at trial (if pleading not guilty) and at sentencing (for guilty or not guilty plea).
  - Ask the accused if he plans on retaining a civilian attorney. A military attorney cannot be appointed for a summary court-martial and will not be present at the SCM. However, if the accused wishes to hire civilian counsel at his own expense, he should have his attorney with him at the Preliminary Proceeding and SCM. If the accused has retained a civilian attorney, your dealings should be through the attorney and not the accused.
  - Set a date and time to hold the Preliminary Proceedings. Tell the accused to bring any documentary evidence with him to the Preliminary Proceeding.
  - If the accused is going to plead not guilty and/or hire a civilian attorney, contact the trial counsel before proceeding any further.
- **Second Meeting with the Accused—the Preliminary Proceeding**
  - Note: This meeting may be combined with the actual SCM
  - Fill out Blocks 1a – 3c of DD Form 2329 prior to beginning this pre-trial meeting.
  - Begin the Preliminary Proceeding by reading from the Summary Court-Martial Trial Guide. Stop when you get to the part entitled, “Trial Proceedings.”
  - Take notes as you go along—write in the accused's response to each question on your copy of the Guide and keep this for inclusion in the record of trial later.
  - Remind the accused of the time and date for the trial proceedings.

- Ask the accused if he has any questions about the SCM Rights Form and have him sign it in your presence. You will include this form in the record of trial.
- Ask the accused how he intends to plead at the trial. If the accused has a Pre-Trial Agreement obligating him to plead guilty, tell him that you will stop the proceeding if he fails to plead guilty at the trial.

## **FINAL PRETRIAL PREPARATIONS**

- Not Guilty Pleas
  - You must meet with the trial counsel or military justice office for all not guilty pleas
  - The accused is presumed innocent
  - You are the prosecutor, defense counsel, judge, and jury
  - You present the prosecutor's case first
  - You then present the defense's case – RCM 1304(b)(2) requires you to obtain evidence which tends to disprove the accused's guilt or establishes extenuating circumstances
  - The Military Rules of Evidence apply—you can't just consider a piece of paper as evidence, you must call live witnesses to support the document's admissibility.
  - You determine the admissibility of all evidence and you must accept all legal and competent evidence offered during the trial. However, just because the evidence is included in the package or offered by the accused, does not make it admissible. The Military Rules of Evidence apply at a SCM and must be followed. Evidence is a law school course, in and of itself, so if you have questions about a piece of evidence, call the trial counsel.
  - The Government (prosecution) bears the burden of proof beyond a reasonable doubt. You may get instruction from trial counsel on this burden of proof.
  
- Gather Defense Evidence: By this point the accused may have asked you to produce evidence or witnesses for the merits or on sentencing.
  
- Arrange the presence of the witnesses at trial. You will not simply be using the witness statements as evidence in the summary court-martial. These statements may not be used as a substitute for "live" testimony of a witness unless the accused gives his consent. The accused has the right to have available witnesses present. These are usually easy to locate and to produce—work with your legal officer to make this happen. Remember, you cannot simply rely on a piece of paper, such as a logbook entry stating that Cpl Jones reported that Pvt Dirtbag was disrespectful—you must call Cpl Jones as a live witness. If you have questions or need further assistance on this issue, contact the trial counsel.
  
- Ensure compliance with the Victim and Witness Assistance Program (VWAP). Federal law provides victims and certain witnesses of crimes a number of rights. You play a vital role in complying with this law by serving as a check on the trial counsel in this process. Contact the trial counsel identified in block 11 to ensure he or she has contacted the victim, explained the victim's role and rights in the process, and ascertained whether or not the victim wishes to be informed if the accused is sentenced to any confinement.

- Tell the legal officer the date of the trial so that he or she can make arrangements for chasers in the event you award confinement.

## THE TRIAL

- If at any time you are confused, call a recess and contact the trial counsel.
- The SCM is a public forum, but you may limit observers, or remove disruptive ones.
- You question all the witnesses first, then give the accused the opportunity to question them. Keep the questions short and easy to understand.
- You will be following the Summary Court-Martial Guide that has been provided in your package starting at the portion entitled “Trial Proceedings.” Take thorough notes as you proceed and summarize the testimony of witnesses in your notes.
- Once you are ready to start, call the accused in and ask him if he has any last minute questions.
- **Have the accused sign the *Booker* warnings on the Addendum to NAVMC 118. You cannot proceed with the SCM without having him sign this form.**
- If the accused plead guilty, you must inquire into the factual basis for the accused’s guilty plea. Ask questions to determine that the accused actually committed the offense(s). Use, who, what, when, and where questions to determine. Also refer to the sample Plea Inquiry enclosed in this handbook.
- Pointers for Sentencing:
  - Listen to what the witnesses have to say about the accused—good, bad, or indifferent.
  - Don’t ask a witness what they think an appropriate punishment should be—that’s an inadmissible question because it’s your job to make that determination.
  - Read all documents offered by the accused, as the Rules of Evidence are relaxed during sentencing.
  - Read the accused’s SRB—don’t consider NJPs that are more than 2 years old or where there are no *Booker* rights on his page 12 (warning to the accused of his right to refuse NJP)
  - At the end of the trial, you must select a sentence in accordance with your best judgment, based upon the evidence presented in the case, your own experience and general background, and that best serves the ends of good order and discipline in the military, the needs of the accused, and the welfare of society.
  - Apply the five principle reasons for sentencing:
    - ✓ Protection of society from the wrongdoer
    - ✓ Punishment of the wrongdoer
    - ✓ Rehabilitation of the wrongdoer
    - ✓ Reservation of good order and discipline
    - ✓ Deterrence

- If you have found the accused guilty of any offense, ensure that he reads, signs, and returns to you the “Acknowledgment of RCM 1105 Rights” form.
- If you awarded confinement you must complete the DD Form 2704 (VWAP). Give the original to the legal officer and make a copy for inclusion in the record of trial. Turn the accused over to the legal officer or chasers. Ensure they have a copy of the DD Form 2704 and a certified true copy of the Results of Trial Letter to take to the brig.

## **YOUR POST-TRIAL RESPONSIBILITIES**

- You may decide to recommend to the convening authority that he or she suspend a portion of the sentence that you adjudged. If you decide to do this, do it in writing as soon as possible and include a copy of this recommendation in the Record of Trial.
- Completed the Results of Trial Letter—this should be completed as soon as you announce the sentence and then give it to the legal officer for distribution. Make a copy for inclusion in the Record of Trial.
- Complete the Record of Trial: This is used for legal review of the SCM. An incomplete or inaccurate Record of Trial can negate the entire SCM. The Record of Trial includes the following:
  - ✓ DD Form 2329
  - ✓ Written summary of the proceedings
  - ✓ The Charge Sheet
  - ✓ The Convening Order
  - ✓ The Pre-trial Agreement (if applicable)
  - ✓ The *Booker* warnings (Addendum to NAVMC 118)
  - ✓ The Exhibits that were offered into evidence (whether or not accepted into evidence)
  - ✓ The Trial Guide used with the accused’s answers filled in
  - ✓ The Summary Courts-Martial Acknowledgment of Rights Form
  - ✓ A copy of the Results of Trial letter from you to the CO
  - ✓ Acknowledgment of RCM 1105 Form (and waiver letter, if applicable)
  - ✓ A copy of the DD 2704 Form (if applicable)
  - ✓ Service of the Record of Trial Form
- Serve the Record of Trial on the accused by making a copy of the completed record of trial (all the documents listed above) and giving it to the accused. If he is already in confinement, arrange this through the legal officer. Ensure that the accused signs the Service of Record of Trial Form.
- Give the original Record of Trial and the SRB to the legal officer. Congratulations—you are finished!

**For Procedural Questions on the Summary Court-Martial or questions concerning the Record of Trial or Forms included, please contact the Review Officer at the Joint Law Center.**