MILITARY JUSTICE AND ARTICLE 15S

Office of the Staff Judge Advocate
Eielson AFB, Alaska

354 FW/JA

Legal Assistance & Preventive Law
Pamphlet Series

As of 1 August 2015

How much do you know about the military justice system? If you are like many people, you probably have wondered why there is a separate criminal justice system for military personnel, and what the differences are. What may surprise you is that the military justice system actually provides more procedural due process rights than the civilian criminal justice system does.

INTRODUCTION

The Uniform Code of Military Justice (UCMJ) is the military's criminal code. It was enacted by Congress in 1950 and became effective in 1951. It has been amended since then, with significant changes in 1968 and 1983. While the UCMJ was enacted in law in 1950, the concept of a separate military code was neither new nor an invention of the U.S. military. Alexander's Macedonians refused to be subject to anything but their own military code. The Roman Legions took with them into battle their military code, a forebear of the British Articles of War. Similarly, George Washington's Continental Army relied on the British Articles of War to maintain discipline.

The UCMJ is part of the United States Code (the federal statutes) and is implemented through executive orders of the President. Those executive orders form a comprehensive volume of law known as the Manual for Courts-Martial (MCM). The UCMJ applies to all uniformed services, including the Coast Guard. The MCM's preamble explains that "[t]he purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."

Many legal scholars believe the UCMJ has not only kept pace with innovations in civilian criminal law but has led the way, establishing more safeguards to protect the rights of those accused of criminal offenses. For instance, the military had its own broader version of the "Miranda rights" fifteen years before the U.S. Supreme Court recognized that right for civilian suspects. In addition, an accused facing the potential of a general court-martial (the most serious level of courts-martial) has far greater rights during a preliminary "Article 32" hearing than does a civilian suspect before a state or federal grand jury.

WHO IS SUBJECT TO THE UCMJ?

As a result of a decision by the U. S. Supreme Court, the military status of a service member alone gives the military jurisdiction over criminal offenses committed by that person. Therefore, any violation of the UCMJ is within the military's jurisdiction, regardless whether the member was on leave or far away from any military installation. This includes Reservists whenever they are in Title 10 status and National Guard members when they are in federal service. Court-martial jurisdiction even continues over retired Regular Air Force personnel.

WHAT CRIMES ARE PUNISHABLE UNDER THE UCMJ?

The UCMJ essentially is a complete set of criminal laws. It includes many crimes punished under civilian law, such as murder, rape, drug use, larceny, conspiracy, and drunk driving. The UCMJ, however, goes beyond civilian law to punish other conduct that affects good order and discipline in the military. Those unique military crimes include, for example, offenses such as

desertion, mutiny, absence without leave, disrespect towards superiors, failure to obey orders, dereliction of duty, wrongful disposition of military property, drunk on duty, malingering, disrespect toward superior commissioned officers, fraternization, and conduct unbecoming an officer. The UCMJ also includes provisions punishing misbehavior before the enemy, such as misconduct as a prisoner, aiding the enemy, spying, and espionage.

WHAT IS NONJUDICIAL PUNISHMENT?

Article 15 of the UCMJ authorizes the imposition of nonjudicial punishment (NJP) for certain, usually minor, misconduct. It is a disciplinary measure more serious than administrative corrective measures, but less serious than trial by court-martial. This allows commanders to dispose of certain offenses without the stigma of a court-martial, unless the service member demands trial by court-martial.

Commanders must notify service members of the nature of the charged offense(s), the evidence supporting the offense(s), and the commander's consideration to impose NJP. The service member may then consult with a defense counsel to determine whether to accept NJP or demand trial by court-martial. Accepting NJP is simply a choice of forum; it is not an admission of guilt. By accepting NJP, the member elects to have the commander, rather than a judge or jury, determine whether or not the member committed the offense(s); and if so, what, if any, punishment is appropriate.

If a member accepts NJP, he or she is entitled to a personal appearance to present his or her side of the story to the commander. This hearing is not an adversarial proceeding, but the member may have a spokesperson at the hearing, may request that witnesses appear and testify, and may present evidence. The commander must consider any information offered during that hearing and must be convinced by reliable evidence that the member committed the offense before imposing punishment.

If the member chooses not to appear personally before the commander, the member may present matters in defense, extenuation, and mitigation in writing instead of making a personal presentation.

Various kinds of punishment are allowed under Article 15, with the most serious being reduction in rank (for enlisted personnel), and forfeiture of pay or extra duties. There are maximum limits for each category of punishment, depending on the ranks of the member and the commander. NJP is not a criminal conviction, and does not follow the member into civilian life after leaving military service.

Any member who considers the punishment to be unjust or disproportionate to the offense(s) may appeal to the next higher commander. The appeal authority may set aside the punishment, decrease its severity, or deny the appeal. The appeal authority cannot, however, increase the punishment.

This pamphlet is for basic information on military justice and Article 15s. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information. If you have been suspected of a crime and are seeking legal advice, please contact the Area Defense Counsel at 377-2257.

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