

Assignment

Law



The right to Counsel in the Military Introduction The right to counsel for Courts-Martial is defined in the statute governing right to counsel (Section 838(b) of Title 10, US code). This section defines the accused's right to numerous counsels. The section states that the accused has the right of being represented at court-martial by a meticulous military defense counsel, which is provided at no cost to the accused. The defendant also has the right to appeal, by name, a different military lawyer. The court-martial is designed to try criminal cases though it should thoroughly inquire on both sides of the problem. There are various procedures in which the court martial deals with cases especially those relating to criminal cases of a military officer. After an offense is committed by an officer, the case can be reported by anyone to the accused's immediate commander as soon as possible.

After one confinement, one is subjected to three types of pre-trial restrictions such as order of severity, confinement, and apprehension. The accused is then arrested or apprehended either through an order, orally or in written form by competent authority that also directs the accused to remain within certain specified limits.

The right to counsel in the military

Service members in military, relish analogous rights secured by the statute and executive order, a military law gives the defendant, the right to counsel before a special or general court martial or an Art. 32 investigations. At the Supreme Court decision made was that there was no constitutional right to the counsel in summary courts-martial. Usually in special courts-martial, any accused has the right to; military counsel of his/her selection at government expense if available. Civilian counsel of his choosing, allotted military counsel at the Government expense. Article 38(b), 10 U. S. C. § 838(b).

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For multiple defendant cases, discrete counsel is appointed for each defendant to avoid any problem of conflicts of interest. Article 38(b)(4), 10 U. S. C. § 838(b)(4). For the accused who decides to choose a civilian counsel he/she is also entitled to appointed military associate counsel. Article 38(b)(4), 10 U. S. C. § 838(b)(4). The right to counsel does not only apply at trial, but also at pretrial investigations. This may also take place during depositions, and upon the appeal. Under article 70, the practice of appointing new counsel during appeal insures a renewed look at trial errors and competency of trial defense counsel. An appointed counsel must also meet the following competency; the counsel must be of typical competency in identifying legal issues and defenses in the military criminal law field.

Conclusion

In general courts-martial counsel must be admitted to a federal bar or the utmost court of a state and military counsel should be certified. And be capable of performance such duties of Judge Advocate General of the armed force. Article 27(b), 10 U. S. C. § 827(b); RCM 502(d).

In special courts-martial, comparable requirements apply “ unless counsel with such qualifications cannot be obtained on account of physical conditions or military exigencies.” Article 27(c)(1), UCMJ, 10 U. S. C. § 827(c)(1).

Court-martial comprises of one impartial commissioned officer who obliges as judge. As a judge he/she has an active, and not a passive, role. Due to this the role or even presence of adversarial counsel is minimized, and the protections accorded to the accused in civilian trials or special and general courts-martial are substantially diminished.

Work cited

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Charles, Shanor, and Hogue, Lynn (2013). *The Military Law in a Nutshell*, 4th, 4th Edition. West Academic Publishing, VitalBook file.