**Section 400.415 Courts-Martial Composition**

a) Members of a Court-Martial

1) *Any* SMF *commissioned officer is eligible to serve on all courts-martial for the trial of any persons subject to* the *Code.* (Code Section 25(a))

2) *Any* SMF *warrant officer is eligible to serve on general and special courts-martial for the trial of any person subject to* the *Code, other than a commissioned officer*. (Code Section 25(b))

3) *Any enlisted member of the* SMF *who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member subject to* the *Code,* *but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under* Code Section 39(a) *prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial unless the membership includes at least ⅓ enlisted members, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If* enlisted *members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained. In this* subsection (a), *"unit" means any regularly organized body of the* SMF *not larger than a company, a squadron or a body corresponding to a company or squadron.* (Code Section 25(c))

4) *When it can be avoided, no person subject to* the *Code may be tried by a court-martial any member of which is junior to the accused in rank or grade.* (Code Section 25(d))

5) *When convening a court-martial, the convening authority shall detail as members* of the court-martial *such* SMF *members as, in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No* SMF *member is eligible to serve as a member of a general or special court-martial when that member is the accuser or a witness, or has acted as investigating officer or as counsel in the same case.* (Code Section 25(e))

6) *Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating. The convening authority may delegate the authority under this* subsection (a)(6) *to a judge advocate or to any other principal assistant*. (Code Section 25(f))

7) Any delegation of authority to a judge advocate or principal assistant for purposes of excusal of members must be in writing, unless exigencies prevent written delegation. Verbal authorization shall be reduced to writing as soon as possible.

8) Duties. The members of a court-martial shall determine whether the accused is proved guilty and, if necessary, adjudge a proper sentence, based on the evidence and in accordance with the instructions of the military judge. Each member has an equal voice and vote in deliberating upon and deciding all matters, except as otherwise specifically provided in this Manual. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Manual, reports of decided cases, or any other reference material, except that the president of a special court-martial without a military judge may use these materials in open session.

9) President

A) Qualifications. The president of a court-martial shall be the detailed member senior in rank then serving.

B) Duties. The president shall have the same duties as the other members and shall also:

i) Preside over closed sessions of the members of the court-martial during their deliberations;

ii) Speak for the members of the court-martial when announcing the decision of the members or requesting instructions from the military judge; and

iii) In a special court-martial without a military judge, perform the duties assigned by this Manual to the military judge, except as otherwise expressly provided.

b) Military Judges

1) Qualifications to serve as a military judge are described in Code Sections 6 and 26. In addition to the mandatory qualifications delineated in Code Sections 6 and 26, the following factors may be considered when certifying an officer as a military judge:

A) Appropriate judicial decorum, civility and temperament;

B) Civilian judicial experience;

C) Military judicial experience;

D) Military legal experience;

E) Designation as judge advocate;

F) Reputation;

G) Familiarity with the Code and this Manual;

H) Completion of the active component Military Judges Course;

I) Knowledge of general criminal law and procedures;

J) Education, training and experience;

K) Familiarity with the customs, procedures and organization of the service branch of the accused; and

L) Any other relevant factors.

2) *In addition to the requirements noted* in Code Section 6(a), *a military judge shall be*:

A) *an active commissioned officer of an organized* SMF;

B) *a member in good standing of the bar of the highest court of a state or a member of the bar of a federal court for at least 5 years;* and

C) *certified as qualified for duty as a military judge by the senior force judge advocate* that is in the *same force as the accused*. (Code Section 26(b))

3) *When a military judge is not a member of the bar of the highest court of the state,* he or she *shall be deemed admitted pro hac vice, subject to filing a certificate with the senior force judge advocate in the same force as the accused, setting forth the qualifications* listed *in* subsection (b)(1). (Code Section 26(c))

4) *The military judge of a general or special court-martial shall be designated by the senior force judge advocate* in *the same force as the accused, or a designee, for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness or efficiency of the military judge* that *relates to performance of duty as a military judge*. (Code Section 26(d))

5) *No person is eligible to act as military judge in a case if that person is the accuser or a witness, or has acted as investigating officer or a counsel in the same case*. (Code Section 26(e))

6) *The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor vote with the members of the court.* (Code Section 26(f))

c) Absent and Additional Members

1) *No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.* (Code Section 29(a))

2) *Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of 5. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.* (Code Section 29(b))

3) *Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not* fewer *than 3 members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court, or a stipulation* *to that record, is read to the court in the presence of the military judge, the accused and counsel for both sides.* (Code Section 29(c))

4) *If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of* Code Section 16(1)(B) or (2)(B), *after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced, or a stipulation to that record is read in court in the presence of the new military judge, the accused, and counsel for both sides*. (Code Section 29(d))