

MICHIGAN CODE OF MILITARY JUSTICE OF 1980 (EXCERPT)

Act 523 of 1980

Article 7

32.1036 Application of Military Rules of Evidence and Rules for Courts-Martial to proceedings; promulgation of supplemental regulations.

Sec. 36.

The Military Rules of Evidence and the Rules for Courts-Martial as promulgated in the most recent version of the Manual for Courts-Martial must, as recognized in military criminal cases in the courts of the military, apply to a court-martial convened under this code to the extent practical and to the extent that the Military Rules of Evidence and the Rules for Courts-Martial as promulgated in the most recent version of the Manual for Courts-Martial do not conflict with state substantive law. The adjutant general may promulgate supplemental regulations to govern matters not provided for in the Manual for Courts-Martial.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

Admin Rule: R 32.101 et seq. and R 32.171 et seq. of the Michigan Administrative Code.

32.1037 Convening authority or commanding officer; censuring, reprimanding, or admonishing court; coercing or influencing by unauthorized means; action of court-martial or member of court-martial; applicability; preparing report or making determination concerning advancement, assignment, transfer, or retention of member of state military forces.

Sec. 37.

(1) An authority convening a general, special, or summary court-martial, or any other commanding officer or officer serving on the staff of the commanding officer shall not censure, reprimand, or admonish the court or a member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of the court's functions in the conduct of the proceedings. A person subject to this code shall not attempt to coerce or, by any unauthorized means, influence the action of a court-martial, or any member of the court-martial, in reaching the findings or sentence in a case, or the action of a convening, approving, or reviewing authority with respect to judicial acts. These provisions shall not apply to the following:

(a) General instructional or informational courses in military justice, if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial.

(b) Statements and instructions given in open court by the military judge or trial or defense counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces or whether a member of the state military forces should be retained on duty, a person subject to this code in preparing the report or making the determination shall not do any of the following:

(a) Consider or evaluate the performance of duty of the member as a member, military judge, trial counsel, or defense counsel of a court-martial.

(b) Give a less favorable rating or evaluation of the member of the state military forces because of the zeal with which the member, as counsel, represented an accused before a court-martial.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1038 Duties of trial counsel; right of accused to representation by civilian counsel, military counsel, or defense counsel; associate counsel; conviction; brief; assistant trial counsel and assistant defense counsel;

performance of duties.

Sec. 38.

(1) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and, under the direction of the court-martial, shall prepare the record of the proceedings.

(2) The accused has the right to be represented before a general or special court-martial by civilian counsel if provided by the accused, at the accused's own expense, or by military counsel of the accused's own selection if reasonably available, or by the defense counsel appointed under section 27. If the accused has counsel of his or her own selection, the defense counsel, and assistant defense counsel, if any, who were appointed, if the accused so desires, shall act as associate counsel. Otherwise, the appointed counsel shall be excused by the military judge or by the president of a court-martial without a military judge.

(3) In each court-martial proceeding resulting in a conviction the defense counsel may forward for attachment to the record of proceedings a brief of those matters the defense counsel feels should be considered in behalf of the accused on review, including an objection to the contents of the record which the defense counsel considers appropriate.

(4) An assistant trial counsel of a general court-martial, under the direction of the trial counsel or if the assistant trial counsel is qualified to be a trial counsel as required by section 27, may perform any duty imposed by law, rule, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial, under the direction of the defense counsel or if the assistant defense counsel is qualified to be the defense counsel as required by section 27, may perform any duty imposed by law, rule, or the custom of the service upon counsel for the accused.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1038a Accused rights; request for representation.

Sec. 38a.

The accused in a proceeding under this code must be permitted to request a military defense counsel of choice who, if reasonably available, must be detailed to represent the accused and who, if not a member of the bar of this state, may represent the accused on a pro hac vice motion to the court approved by the military judge.

History: Add. 2024, Act 77, Imd. Eff. July 8, 2024

32.1039 Military judge; calling court into session without presence of members; purposes; proceedings to be made part of record and conducted in presence of certain persons.

Sec. 39.

(1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may call the court into session without the presence of the members for the purpose of any of the following:

(a) Hearing and determining motions raising a defense or objections which are capable of determination without trial of the issues raised by a plea of not guilty.

(b) Hearing and ruling on a matter which may be ruled upon by the military judge, whether or not the matter is appropriate for later consideration or decision by the members of the court.

(c) Holding the arraignment and receiving the plea of the accused.

(d) Performing any other procedural function which may be performed by the military judge under section 26 which does not require the presence of the members of the court.

(2) The proceedings under subsection (1) shall be conducted in the presence of the accused, the defense counsel,

and the trial counsel and shall be made a part of the record.

(3) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1040 Continuances.

Sec. 40.

The military judge or a court-martial without a military judge, for reasonable cause, may grant a continuance to any party for a period, and as often, as appears to be just.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1041 Challenges for cause and peremptory challenges.

Sec. 41.

(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than 1 person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and trial counsel is entitled to 1 peremptory challenge, but the military judge may not be challenged except for cause.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1042 Persons required to take oath or affirmation in presence of accused; examination of witnesses on oath or affirmation.

Sec. 42.

(1) Before performing their respective duties, interpreters and, in general and special courts-martial, members, military judges, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(2) Each witness before a military court shall be examined on oath or affirmation.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1043 Trial and punishment; limitations; computation of time period.

Sec. 43.

(1) An individual charged with desertion or absence without leave when the governor, by proclamation has declared a state of emergency, or with aiding the enemy, or mutiny, shall be tried and punished at any time without limitation.

(2) An individual charged with an offense under this code is not liable to be tried by court-martial or punished under section 15 if the offense was committed more than 5 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under section 15.

(3) Periods in which the accused was outside of this state, in the custody of civil authorities, or in the hands of the enemy must be excluded in computing the period of limitations prescribed in this section.

(4) Periods in which the accused is absent without authority or is fleeing from justice must be excluded in computing the period of limitation prescribed in this section.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

32.1044 Trial of accused twice for same offense prohibited.

Sec. 44.

(1) A person subject to this code shall not be tried a second time by a civil court or a military court of the state for the same offense.

(2) A proceeding in which an accused is found guilty by a court-martial upon a charge or specification is not a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but, before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without fault of the accused is a trial in the sense of this section.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1045 Entering plea of not guilty in record; entering finding of guilty where plea of guilty made and accepted; withdrawal of guilty plea.

Sec. 45.

(1) If an accused, after arraignment, makes an irregular pleading, or after a plea of guilty sets up a matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn before the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1046 Obtaining witnesses and other evidence; equal opportunity; powers of military judge or summary

court officer; process issued in court-martial to run to any part of state.

Sec. 46.

(1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence.

(2) The military judge or a summary court officer may do any of the following:

(a) Issue a warrant for the arrest of a person who disobeys a written order by the convening authority to appear before the court.

(b) Issue subpoenas duces tecum and other subpoenas.

(c) Enforce by attachment the attendance of witnesses and the production of books and papers.

(3) Process issued in a court-martial to compel a witness to appear and testify and to compel the production of other evidence shall run to any part of the state.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1047 Offenses against state; compliance with subpoena; attendance, qualification, and testifying as witness; production of evidence; trial; jurisdiction; punishment.

Sec. 47.

(1) A person is guilty of an offense against the state and may be punished in the same manner as provided in actions or proceedings in the circuit courts of this state if that person does any of the following:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, military commission, court of inquiry, or efficiency board, or before a military or civil officer designated to take a deposition to be read in evidence before the court-martial, military commission, court of inquiry, or efficiency board and fails to comply with the subpoena.

(b) Has been duly paid or tendered the fees and mileage of a witness at rates allowed to witnesses attending circuit courts of this state, and does not attend.

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce evidence which the person has been subpoenaed to produce.

(2) A person who commits an offense named in subsection (1) shall be tried in a court of original criminal jurisdiction of this state and jurisdiction is conferred on those courts for the purpose of trying that offense. Upon conviction, the person shall be punished by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1048 Military court; contempt power; punishment.

Sec. 48.

A military court may punish for contempt an individual subject to this code who willfully and unlawfully refuses to be sworn or to affirm as a witness, or who refuses to answer a legal or proper question, or who uses a menacing word, sign, or gesture in the court's presence, or who disturbs the court proceedings by riot or disorder. The punishment for contempt in a summary court-martial proceeding must be confinement for not more than 25 days or a fine of not more than \$500.00, or both. The punishment for contempt in any other military court must be confinement for not more than 100 days or a fine of not more than \$2,500.00, or both.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

32.1049 Depositions.

Sec. 49.

(1) At any time after charges have been signed as provided in section 30, a party may take an oral or written deposition unless the military judge or a court-martial without a military judge hearing the case, or if the case is not being heard, the convening authority forbids the deposition for good cause. If a deposition is to be taken before charges are referred for trial, the authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(2) The party at whose insistence a deposition is to be taken shall give to each of the other parties reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by a military or civil officer authorized by the laws of the state, or by the laws of the place where the deposition is taken, to administer oaths.

(4) An authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before a court-martial or in a proceeding before the court of inquiry, if 1 of the following appears:

(a) A witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing.

(b) The witness, by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing.

(c) The present location of the witness is unknown.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1050 Reading in evidence sworn testimony of person whose oral testimony not obtainable; conditions.

Sec. 50.

(1) If not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, if otherwise admissible under the rules of evidence, may be read in evidence by any party before a court-martial, if the accused was a party before the court of inquiry, if the same issue was involved or if the accused consents to the introduction of the evidence, and if the accused was physically present when the testimony was taken.

(2) The testimony shall be read in evidence only by the defense in cases extending to the dismissal of an officer.

(3) The testimony also may be read in evidence before a court of inquiry or a military board.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1050a Lack of mental responsibility as affirmative defense.

Sec. 50a.

(1) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts and therefore lacked mental responsibility. Mental disease or defect does not otherwise constitute a defense.

(2) The accused has the burden, under subsection (1), of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as

to the defense of lack of mental responsibility under this section and shall charge them to find the accused 1 of the following:

- (a) Guilty.
- (b) Not guilty.
- (c) Not guilty only by reason of lack of mental responsibility.
- (4) Notwithstanding section 52, the accused shall be found not guilty only by reason of lack of mental responsibility if a majority of the members of the court-martial present at the time the vote is taken determine that the defense of lack of mental responsibility had been established or, in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

History: Add. 2005, Act 186, Imd. Eff. Oct. 27, 2005

32.1051 Voting by members of court-martial on findings and on sentence; rulings by military judge upon questions of law or interlocutory questions; finality; instructing court as to elements of offense and charge; court-martial composed of military judge only; procedure.

Sec. 51.

(1) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret, written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall announce the results of the ballot to the members of the court.

(2) The military judge shall rule upon questions of law and interlocutory questions arising during the proceedings. A ruling made by the military judge upon a question of law or an interlocutory question other than the factual issue of mental responsibility of the accused, and upon a question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge may change a ruling made by the military judge at any time during the trial.

(3) Before a vote is taken on the findings, the military judge, in the presence of the accused and counsel, shall instruct the court as to the elements of the offense and charge the court as follows:

(a) The accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond a reasonable doubt.

(b) If there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

(c) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree to which there is no reasonable doubt.

(d) The burden of proof to establish the guilt of the accused beyond a reasonable doubt rests upon this state.

(4) Subsections (1) and (2) do not apply to a court-martial composed of a military judge only. The military judge of that court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, set an appropriate sentence. The military judge of that court-martial shall make a general finding and, on request, shall find the facts specially. If an opinion or memorandum of decision is filed, the opinion or memorandum shall be sufficient if the findings of fact appear in the opinion or memorandum.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1052 Conviction and sentence; concurrence of 3/4 of members present required; determination of questions by majority vote or lesser vote; tie vote.

Sec. 52.

(1) An individual must not be convicted of an offense in a general or special court-martial, except under any of the following circumstances:

(a) After a plea of guilty under section 45.

(b) By a military judge in a court-martial with a military judge alone under section 16.

(c) In a court-martial with members under section 16, by the concurrence of 3/4 of the members present at the

time the vote is taken.

(2) Each sentence imposed by a court-martial must be determined by the concurrence of 3/4 of the members present at the time that the vote is taken.

(3) Any other question to be decided by the members of a general or special court-martial must be determined by a majority vote, but the determination to reconsider a finding of guilty or reconsider a sentence, to decrease or lessen the sentence, may be made by a lesser vote that indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

32.1053 Announcement by court-martial of findings and sentence.

Sec. 53.

A court-martial shall announce its findings and sentence to the parties as soon as determined by the court.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1054 Record of proceedings; authentication; contents; filing original and copies of trial record.

Sec. 54.

(1) Each general and special court-martial shall keep a separate record of the proceedings in each case. The record must be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, the record must be authenticated by the trial counsel. If both the military judge and the trial counsel are unavailable for the reasons set forth in this subsection, the record must be authenticated by 2 members.

(2) Each summary court-martial shall keep a separate record of the proceedings in each case. The record must reflect the pleas of the accused to the charges and specifications, the findings and sentence, and the action by the convening authority.

(3) After final action by the convening authority, the original record of trial of each court-martial must be filed in the office of the state staff judge advocate, 1 copy must be filed in the office of the staff judge advocate of the command concerned, 1 copy must be filed in the headquarters of the special court-martial convening authority over the accused, and 1 copy must be given to the accused.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024