

McCORMACK & McCORMACK

ATTORNEYS AT LAW

ADVICE FOR MILITARY SUSPECTS

Irreparable harm could result if you fail to assert your rights!

1. **STATEMENT OF RIGHTS** - A person on active duty with a military service of the United States, if suspected of committing a criminal offense under the Uniform Code of Military Justice, has the following rights:
 - a. **THE RIGHT** to be informed of the specific offense(s) he or she is suspected of committing.
 - b. **THE RIGHT** to remain silent. Any statement a person makes, oral, written, or non-verbal [nodding of the head] may be used as evidence against that person in a trial by courts-martial or in other judicial or administrative proceedings.
 - c. **THE RIGHT** to an appointed military attorney free of charge.
 - d. **THE RIGHT** to obtain a civilian attorney of the person's own choosing, at that person's expense.
 - e. **THE RIGHT** to consult with an attorney and to have a lawyer present during any interrogation.
 - f. **THE RIGHT** to terminate an interrogation at any time.
 - g. **THE RIGHT** to refuse to give consent to search.
 - H. **THE RIGHT** against self-incrimination.
 - (1) A suspect has a legal and moral right to remain silent and place the burden of overcoming the presumption of innocence and proving his or her guilt beyond a reasonable doubt on the investigators and attorneys for the government.
 - (2) A suspect should never make an oral, written, or non-verbal statement concerning suspected criminal conduct, even to close friends or relatives without first consulting an attorney. Your best friend can turn out to be your biggest problem at trial and your family members can be compelled to testify against

you. Also, BEWARE of the fact that a routine law enforcement tactic is to monitor and record phone or personal conversations between a suspect and the alleged victim or other persons which may play a role in the case.

- (3) If a suspect is ordered to meet with a military investigator, the suspect should obtain an attorney to either accompany him/her or receive advice from an attorney prior to meeting with the investigator. Military law holds that it is generally improper for investigators or command representatives to question an accused in the absence of an attorney once an attorney enters the proceedings.
- (4) Criminal investigators work to protect the interest of the government and not the interests of the suspect. ONLY a suspect's personal attorney can and will work to protect the interests of the suspect. During an interrogation, some investigators may use the "good guy-bad guy" technique in which one acts rough and tough and the other one sympathizes and tries to "help" the suspect. The investigators can legally lie to or deceive a suspect in an effort to get a statement, so be careful! These people are highly trained to elicit incriminatory statements from suspects. The safest thing to do is to simply refuse to talk (or even listen to) the investigators.
- (5) The request for an attorney must be a clear, unequivocal insistence to speak to an attorney; Comments like "do I need an attorney" or "I think I want an attorney" are NOT sufficient to invoke the right to counsel and to terminate the interview.

**NEVER FOLLOW THE ADVICE OF INVESTIGATORS OR TALK TO INVESTIGATORS
WITHOUT FIRST OBTAINING THE ADVICE OF AN ATTORNEY**

2. **GENERAL ADVICE** - A suspect can be ordered by the commander to give certain exemplars (handwriting, hair samples, blood, etc). When possible, consult an attorney before doing so or as soon as possible afterwards, especially if ordered to do so over your objection. **NEVER CONSENT** to the taking of evidence, except for your fingerprints and photograph. Make the investigator get a search authorization from your command. An investigator does not have authority to direct that a suspect produce evidence, except photographs and fingerprints.

If a suspect finds that an appointment has been made for him/her with a military physician, drug/alcohol counselor, social worker, or psychiatrist, the suspect should contact an attorney first because conversations between suspects and anyone other than his/her attorney(s) are not privileged or confidential under the

law. Communications between a suspect and his/her attorney or agent for the attorney (paralegal) are privileged, unless the communication clearly contemplates the future commission of an illegal act.

3. **SEARCHES AND SEIZURES** - A suspect should **NEVER CONSENT** to a search of his/her person or property without first consulting an attorney. A suspect should make it perfectly clear to the authorities that he/she does not consent, but if the authorities persist, a suspect should never physically resist. Search authorizations do not always have to be in writing before the search. There are many theories upon which a search may be legally justified and an attorney will examine the facts of the search at a later time to determine if law supported it. If a suspect consents to the search, there are no legal issues.

IMPORTANT: A person who does consent to a search may withdraw that consent at any time during a search. **IF YOU CONSENT TO A SEARCH, ANY EVIDENCE FOUND COULD BE USED AGAINST YOU!** Force the authorities to get a lawful search authorization.

4. **APPREHENSION, ARREST, AND CONFINEMENT** - In most cases, military investigators do not physically "arrest" a suspect. After questioning or contact by the investigators, the suspect is usually released to his/her command. When confronted by investigators, a suspect should never run away or physically resist apprehension, arrest, or confinement, whether that person is innocent or guilty. He/she should always go along peacefully with the authorities, while asking that an attorney be made available before any questioning. Any resistance or flight, even if innocent, can be considered as evidence of guilt. Additionally, resisting apprehension can lead to additional charges being added and/or pre-trial confinement. Pre-trial confinement can occur under very limited circumstances, where the commanding officer determines that the suspect is a "flight risk," a danger to the community or to himself, or is likely going to continue the misconduct if not put into pre-trial confinement. The commanding officer can also place a suspect in a restriction status pending disposition of his case.

5. **CIVILIAN AUTHORITIES** - If a person is contacted by civilian authorities, the rules are quite different. As stated above, when a military investigator contacts a person suspected of a criminal offense, the suspect must be advised of his rights under Art. 31(b) of the Uniform Code of Military Justice (UCMJ) before questioning. However, if the contact is by civilian police, they are NOT REQUIRED to advise the suspect of his rights to remain silent and to an attorney unless the suspect is IN CUSTODY. This means that the suspect should not let his guard down just because the civilian police have not advised him of his rights - the suspect still should REMAIN SILENT and ASK FOR AN ATTORNEY.

6. **POLYGRAPHS** - polygraphs are frequently used by law enforcement personnel. Under no circumstance should a suspect agree to take a polygraph with the law enforcement agency without advice of counsel. Remember it is permissible for investigators to lie to the suspect, so a suspect could actually "pass" a polygraph, but be told by the examiner that he "failed" the polygraph; the fact that a person is actually telling the truth in no manner means that the polygraph will indicate no deception. Polygraphs are notoriously not reliable.

7. **PROCEDURE** - The decision to prosecute is made after the chain of command has decided there is probable cause that the suspect has committed an offense that is serious enough to warrant a trial by courts-martial. The procedure can take a long period of time and is as follows:
 - a. Charge sheet prepared;
 - b. Charges read (usually by immediate commander) to accused;
 - c. Defense attorney, once assigned or retained, requests information from the government necessary to prepare for the defense - this is known as a DISCOVERY request and it usually takes the Government several weeks to respond;
 - d. Witness interviews are conducted;
 - e. An Article 32 Investigation (like a preliminary hearing) takes place for more serious cases;
 - f. Courts-martial - trial by judge or jury (members);
 - g. If convicted of any offense, Post trial - submission of clemency matters;
 - h. Appeal through military appellate courts

8. **GOOD CONDUCT BEFORE TRIAL** - Waiting for your trial date to arrive will be a very difficult time for you. It is extremely important however that you maintain excellent military bearing and avoid any additional problems prior to trial. As difficult as it will be, you must maintain an excellent attitude at all times.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, CONTACT OUR LAW FIRM IMMEDIATELY.

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