

Article 32

The purpose of an Article 32 hearing is to inquire into the truth of the matter set forth in the charges under the UCMJ, to consider the form of the charges, and to secure information to determine what disposition should be made of the case in the interest of justice and discipline. An investigating officer is appointed to conduct the investigation. Usually the investigating officer is not legally trained. Ultimately, the investigating officer will make the final recommendation for whether the case should proceed. Unlike a grand jury proceeding, the accused has more rights, which work to his or her benefit in an Article 32 hearing. Crucial differences include the right to call witnesses, to present evidence, and to cross-examine witnesses called by the prosecution during the investigation. The right to cross-examine witnesses is an excellent opportunity for the defense and can help lead to a favorable resolution of the case. The testimony and credibility of a key prosecution witness can often be undermined. It also gives the defense a chance to get a better idea of what a witness might say at trial. The hearing also forces the prosecution to show their evidence in the case. Once this is out, it gives the defense an idea of just how strong the government's case is against the accused. The entire hearing can serve as a mechanism for discovery by the defense, which is essential in evaluating how the case should proceed. Further, if the evidence is lacking, it presents an opportunity for the charges to be dropped completely. After the hearing is complete, the investigating officer must file a written report, which addresses the legal issues in the case that were raised and makes recommendations for the nature of the charges. The recommendation can range from dismissal of the charges to a General Court-Martial

. However, the recommendation is just that. The appointing authority may still decide that a case needs to proceed when it was recommended for the charges to be dropped. If you are facing any charges under UCMJ, and an Article 32 investigation, you need to consult with an attorney. You should not waive your Article 32 rights. It is a decision that you should discuss fully with your criminal attorney. The best option is to always have a complete understanding of the legal rights provided to you. Greg Rinckey

is a former JAG officer and has years of experience in representing soldiers at courts-martial in charges ranging from drug distribution to murder. To set up a consultation with him or any of Tully Rinckey's other experienced military lawyers, contact us at 703-525-4700.

Contact us during normal business hours via Skype

. Click on the image above to schedule a time to speak with an attorney.