

Ask the Lawyer: Can a Retiree Face Charges For Actions Committed While on Active Duty?

By Mathew Tully

Q. After I retire from the military, can I face court-martial charges for offenses committed while on active duty?

A.

Leaving the military does not make a retiree untouchable to military justice. Generally, if the military learns of unlawful conduct after a service member retires or was not able to prefer charges before that time, the retiree could be recalled to stand at court-martial.

Under Article Two of the Uniform Code of Military Justice, retired military personnel entitled to pay or receiving hospitalization benefits are subject to the UCMJ. The same goes for service members awaiting discharge after the enlistment term has expired. Barring any statutes of limitations, Article Three holds that these individuals can be tried for offenses they committed while they were subject to the UCMJ regardless of the termination of his or her military status. Under Department of Defense Directive 1352.1, military retirees can be ordered to active duty to perform duties deemed by the Secretary of Defense to be “in the interests of national defense”—including standing at court-martial proceedings.

The 2008 case of *U.S. v. Lantz Nave* illustrates how a retiree could be involuntarily ordered to active duty to face court-martial charges.

The case involved an Air Force sergeant who retired from active duty with an honorable discharge after 20 years of service, affording him retirement pay. Earlier that year, the sergeant got involved in what he believed was an illegal drug trafficking operation, but it was actually a reverse sting operation headed by the FBI.

Almost two years after the sergeant retired from the Air Force, a base commander requested the sergeant’s recall so he could be tried. The Secretary of the Air Force granted that request.

The government charged the sergeant with conspiring to possess cocaine with the intent to distribute, possessing cocaine with the intent to distribute, soliciting others to distribute cocaine, and soliciting another to purchase marijuana.

The sergeant argued he should not have been recalled to active duty because DOD policy prohibits the recalling of retirees “solely for obtaining court-martial jurisdiction over the member.” The Air Force Court of Criminal Appeals disagreed, noting his offenses afforded the Air Force jurisdiction over him, and he was recalled to active duty “simply to ‘facilitate’ the exercise of court-martial jurisdiction.”

Under Article 43, absent without leave and missing movement in times of war, along with

offenses punishable by death such as rape and murder, have no statute of limitation. Generally, the statutes of limitation for most other offenses are five years, though there are numerous exceptions that could extend this period. Military retirees charged for offenses they allegedly committed while serving on active duty should immediately consult with a military law attorney. Depending on the circumstances, a lawyer could help the retiree determine whether the government lacks jurisdiction over them or the offense's statute of limitation has expired.