

Should You Object to Summary Court-Martial?

By Mathew B. TullyQ. How do I know whether I should object to a summary court-martial?

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Summary court-martial is the lowest level of courts-martial. The punishments are less severe than those available at special court-martial or general court-martial. The maximum punishments available to a summary court-martial are up to 30 days of confinement, up to 45 days of hard labor without confinement, up to two months of restriction to specified limits and forfeiture of up to two-thirds of monthly pay for one month. For service members above E-4, punishments do not include confinement, hard labor without confinement and reduction except to the next paygrade. Consider summary court-martial a step up from nonjudicial punishment. Both are for minor offenses, happen quickly and are adjudicated by one officer. The Manual for Courts-Martial says "minor offenses" include those for which the maximum penalty is not a dishonorable discharge or more than one year of confinement. Just as service members can object to nonjudicial punishment and have their case taken to court-martial, they can object to summary court-martial. But if they do, their case will probably be taken to special court-martial, where the maximum punishments are a bad-conduct discharge, up to one year of confinement, up to three months of hard labor without confinement, forfeitures of up to two-thirds of monthly pay, or any forfeiture of pay for more than one year. So why would any service member opt to skip summary court-martial and run the risk of getting thrown out of the military or thrown into a cell for up to a year? While service members rarely object to summary court-martial, those who do usually believe they have a better chance of avoiding adverse consequences at a special court-martial judge and/or a three-member panel than they would before a summary court-martial officer. Such officers usually lack legal training. There is no right to counsel at summary court-martial, meaning the government does not have to provide you one for free. However, service members may retain private counsel at their own expense. If charges have been preferred against a service member, the government still has to rely on witnesses and evidence to prove his or her guilt. A military law attorney can ensure the rules of courts-martial and evidence, with which the summary court-martial officer may not be entirely familiar, are followed. A lawyer can also assess your case and determine whether you stand a better chance at summary court-martial or special court-martial.