

Ask The Lawyer: Should I Reject Captain's Mast For Court-Martial?

By Mathew B. Tully

When deciding whether to take a case to court-martial instead of Captain's Mast, the big question is how hard do you want to fight for your innocence? The next question is do you really want to risk going to jail for years to maintain your innocence? Or might it be better to take the non-judicial punishment, knowing it cannot get worse than 45 days extra duty, 60 days restriction (45 when combined with extra duty), 30 days correctional custody (for E-3s and below), a pay grade reduction, and forfeiture of half a month's pay for two months?

Under Article 15 of the Uniform Code of Military Justice, commanding officers are given substantial leeway in imposing non-judicial punishment to address minor misconduct that is not serious enough for court martial but is too serious for administrative proceedings. At a Captain's Mast hearing, a service member or his or her attorney can present evidence and witnesses to disprove the charge of misconduct. The catch is that at Captain's Mast, service members are attempting to sway just one person: the commanding officer imposing the non-judicial punishment. This commanding officer only needs to prove the alleged misconduct by a "preponderance of evidence."

Unless a service member is attached to or embarked on a vessel, he or she can refuse Captain's Mast and demand a trial. Court martial affords service members certain procedural rights that are lacking at Captain's Mast. There's a judge and jury, and the standard for proof is much higher, set at "beyond a reasonable doubt."

It might make sense for a service member to refuse Captain's Mast if, for example, you believe the commander has an inflexible attitude and will not treat you fairly, or, you have a valid defense that you don't believe your commander will consider. For example, it may be wise to turn down Captain's Mast if you have a valid prescription for a drug you tested positive for, and you believe your commander will ignore the prescription, unfairly find you guilty and maximize your punishment.

Rank is another factor to consider. While a record of non-judicial punishment can have a severely adverse effect on higher-ranking service members' careers, it is less of a career concern for lower-ranking service members.

Service members considering refusing Captain's Mast because they believe their commanding officer will find them guilty no matter what need to remember that they can appeal the non-judicial punishment up the chain of command. Service members have five days to submit to the next superior authority in the chain of command a written appeal to the commanding officer's decision. A military law attorney can prepare for the service member an appeal statement detailing why the finding of guilt is incorrect or why the punishment is

inappropriate. Service members should consult with a military law attorney when making the decision to go to Captain's Mast or court martial.

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. The information in this column is not intended as legal advice. To schedule a meeting with an attorney call 202-787-1900.