

Right to Counsel for Nonjudicial Punishment & Court-Martial Actions

Right To Counsel for Nonjudicial Punishment (NJP). The statute governing NJP (Section 815 of Title 10, United States Code) does not create a right for servicemembers to consult with counsel after being notified of the commander's intent to dispose of an allegation by NJP. The services have different regulatory policies regarding whether servicemembers have the absolute right to consult with counsel.

These regulations differ based on the unique concerns of each of the services in balancing the need to maintain discipline and protections for servicemembers. Air Force personnel have an absolute right to consult with a defense counsel prior to determining whether to accept NJP proceedings or demand trial by court-martial for all NJP.

Army personnel have the right to consult with a defense counsel, except when the commander is utilizing Summarized NJP Proceedings. Navy, Marine Corps and Coast Guard personnel do not have a right to consult with counsel prior to NJP, however, commanders from those services strongly encourage consultation with counsel, subject to the availability of counsel, the delay involved, or operational commitments or military exigencies.

When military defense counsel services are provided, it is at no charge to the servicemember. Consultation with an attorney may be by telephone. Service personnel may also consult with civilian counsel at no expense to the government.

Right To Counsel for Courts-Martial. The statute governing right to counsel (Section 838(b) of Title 10, United States Code) defines the accused's right to various counsel. The accused has the right to be represented at court-martial by a detailed military defense counsel, who is provided at no expense to the accused.

The accused also has the right to request, by name, a different military lawyer. If that attorney is reasonably available, he or she is appointed to represent the accused free of charge. If the request for the other military attorney is granted, the accused does not have the right to keep the services of the detailed defense counsel because the accused is only entitled to one military lawyer. However, the accused may also request to keep his or her detailed counsel, but the attorney's superiors do not have to grant such a request.

In addition, the accused has the right to be represented by a civilian lawyer at no expense to the government. If a civilian lawyer represents the accused, the accused can also keep his or her military attorney on the case to assist the civilian lawyer. Alternatively the accused could excuse his military lawyer and be represented only by the civilian lawyer. Although rarely exercised, the accused also has the right to represent himself.