

35.125 Military judge of a general or special court-martial.

- (1) A military judge shall be detailed to each general and special court-martial. The military judge shall preside over each open session of the court-martial to which the military judge has been detailed.
- (2) A military judge shall be all of the following:
 - (a) An active or retired commissioned officer of the Judge Advocate General's Corps;
 - (b) A member in good standing of the bar of the highest court of a state or a member of the bar of a federal court for at least five (5) years; and
 - (c) A judge certified by the service component Judge Advocate General's Corps, the senior force judge advocate of the state, or a judge of a court of competent jurisdiction who is approved by the adjutant general, subject to the order of succession in subsection (5) of this section. For purposes of this section, "certified" means the judge advocate certification and assignment as a military judge upon completion of the Judge Advocate General's Legal Center and School's military judge training, as referenced in Army Regulation 27-10 or Structure Manning Decision Review 27-10, paragraphs 1 through 4(b).
- (3) In the instance when a military judge is not a member of the bar of the highest court of the state, the military judge shall be deemed admitted pro hac vice, subject to filing a certificate with the senior force judge advocate which is the same force as the accused setting forth the qualifications provided in subsection (2) of this section, and with notice and approval of the state bar and the Chief Justice of the Kentucky Supreme Court.
- (4) The military judge of a general or special court-martial shall be designated by the senior force judge advocate which is the same force as the accused, or a designee, for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.
- (5) The senior force judge advocate shall designate the military judge who is currently assigned to the state military forces and certified as a military judge by his or her service component of the Judge Advocate General's Corps. If that military judge is unavailable, then the senior force judge advocate shall designate upon consideration of this order of succession:
 - (a) A current member of the state military forces who has been certified as a military judge by his or her service component of the Judge Advocate General's Corps;
 - (b) A current member of the state military forces who is both a judge advocate and an actively serving judge of a court of competent jurisdiction;
 - (c) A retired judge advocate of the state military forces who is an actively serving judge of a court of competent jurisdiction;
 - (d) Any other military judge certified by his or her service component of the Judge Advocate General's Corps; or

- (e) Any other military judge certified by the senior force judge advocate as set out in Structure Manning Decision Review 27-10.
- (6) No person is eligible to act as military judge in a case if that person is the accuser, a witness, or has acted as investigating officer or a counsel in the same case.
- (7) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor vote with the members of the court.
- (8) The designation of a military judge shall not be by political appointment. The designation of a military judge by the senior force judge advocate under subsection (5) of this section shall ensure uniformity and impartiality, and prevent any appearance of impropriety. The senior force judge advocate shall assign a military judge from a predetermined list of military judges.
- (9) A military judge does not have to be in the same service as the accused. However, the court-martial shall be conducted using the implementing regulations and procedures of the military service of the accused to the extent that they apply and are not inconsistent with this code. When a service member is tried by a court-martial convened by a joint commander, the applicable implementing regulations and procedures of the service of which the accused is a member shall be used to the extent they apply and are not inconsistent with this code, the state manual for courts-martial, and their implementing regulations.

Effective: July 15, 2016

History: Amended 2016 Ky. Acts ch. 75, sec. 3, effective July 15, 2016. -- Amended 2013 Ky. Acts ch. 32, sec. 27, effective June 25, 2013. -- Amended 1970 Ky. Acts ch. 56, sec. 16. -- Created 1954 Ky. Acts ch. 99, sec. 24, effective July 1, 1954.