

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 827(a) | 50:591(a). | May 5, 1950, ch. 169, §1 (Art. 27), 64 Stat. 117. |
| 827(b) | 50:591(b). | |
| 827(c) | 50:591(c). | |

The words, “detail” and “detailed” are substituted for the words “appoint” and “appointed” throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word “and” is substituted for the words “together with”. The word “considers” is substituted for the word “deems”. The words “necessary or” are omitted as surplusage, since what is necessary is also appropriate. The word “may” is substituted for the word “shall”. The word “later” is substituted for the word “subsequently”.

In subsections (b) and (c), the word “must” is substituted for the word “shall”, since the clauses prescribe conditions and not commands.

In subsection (b), the word “for” is substituted for the words “in the case of”. The words “person * * * a person who is” are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-209, §3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98-209, §3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted “assistant or associate defense counsel” for “assistant defense counsel”.

Subsec. (b)(1). Pub. L. 98-209, §2(d)(1), substituted “judge advocate” for “judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard.”.

Subsec. (c)(3). Pub. L. 98-209, §2(d)(2), struck out “, or a law specialist,” after “is a judge advocate”.

1968—Subsec. (a). Pub. L. 90-632, §2(10)(A), substituted “military judge” for “law officer”.

Subsec. (c). Pub. L. 90-632, §2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98-209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 828 | 50:592. | May 5, 1950, ch. 169, §1 (Art. 28), 64 Stat. 117. |

The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The words, “detail or employ” are substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b)(1) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below the applicable minimum number of members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(2) In this section, the term “applicable minimum number of members” means five members or, in a case in which the death penalty may be adjudged, the number of members determined under section 825a of this title (article 25a).

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of

the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816(1)(B) or (2)(C) of this title (article 16(1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 90-632, §2(11), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98-209, §3(d), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107-107, div. A, title V, §582(c), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 829(a) | 50:593(a). | May 5, 1950, ch. 169, §1 (Art. 29), 64 Stat. 117. |
| 829(b) | 50:593(b). | |
| 829(c) | 50:593(c). | |

In subsections (a), (b), and (c), the word “may” is substituted for the word “shall”.

In subsections (b) and (c), the word “details” is substituted for the word “appoints”, since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-107 designated existing provisions as par. (1), substituted “the applicable minimum number of members” for “five members” in two places, and added par. (2).

1983—Subsec. (a). Pub. L. 98-209 substituted “unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause” for “except for physical disability or as a result of a challenge or by order of the convening authority for good cause”.

1968—Subsec. (a). Pub. L. 90-632, §2(11)(A), substituted “court has been assembled for the trial of the accused” for “accused has been arraigned”.

Subsec. (b). Pub. L. 90-632, §2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90-632, §2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90-632, §2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107-107, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

| Sec. | Art. | |
|------|------|---|
| 830. | 30. | Charges and specifications. |
| 831. | 31. | Compulsory self-incrimination prohibited. |
| 832. | 32. | Preliminary hearing. |
| 833. | 33. | Forwarding of charges. |
| 834. | 34. | Advice of staff judge advocate and reference for trial. |
| 835. | 35. | Service of charges. |

AMENDMENTS

2013—Pub. L. 113-66, div. A, title XVII, §1702(a)(2), Dec. 26, 2013, 127 Stat. 955, substituted “Preliminary hearing” for “Investigation” in item 832.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 830(a) | 50:601(a). | May 5, 1950, ch. 169, §1 (Art. 30), 64 Stat. 118. |
| 830(b) | 50:601(b). | |

In subsection (a), the word “they” is substituted for the words “the same”. The word “commissioned” is inserted for clarity.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.