

48-2503. (KCMJ Art. 25) Who may serve on courts-martial. (a) Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer of or on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such court for trial.

(c) (1) Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but such enlisted member shall serve as a member of a court only if before the conclusion of a session called by the military judge under K.S.A. 48-2704 and amendments thereto prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this section, the word "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, or a body corresponding to one of them.

(d) (1) No person subject to this code may be tried by a court-martial any member of which is junior to such person in rank or grade, unless it cannot be avoided and then only by order of the governor.

(2) When convening a court-martial, the convening authority shall detail as members of the state military forces thereof such members as, in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when such member is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the governor may prescribe, the convening authority may delegate the convening authority's authority under this subsection to the convening authority's staff judge advocate or to any other principal assistant.

History: L. 1972, ch. 203, § 48-2503; L. 1988, ch. 191, § 18; July 1.