

WEST VIRGINIA CODE: §15-1E-25

§15-1E-25. Who may serve on courts-martial.

(a) Any commissioned officer of the state military forces is eligible to serve on all courts-martial for the trial of any person subject to this article.

(b) Any warrant officer of the state military forces is eligible to serve on general and special courts-martial for the trial of any person subject to this article, other than a commissioned officer.

(c) 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 subject to this article, but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under subsection (a), section thirty-nine of this article 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 orally on the record or 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. In this section, "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

(d) When it can be avoided, no person subject to this article may be tried by a court-martial any member of which is junior to the accused in rank or grade.

(e) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces 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 of the state military forces is eligible to serve as a member of a general or special court-martial when that member is the accuser, a witness, or has acted as investigating officer or as counsel in the same case.

(f) 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. The convening authority may delegate the authority under this subsection to a judge advocate or to any other principal assistant.