

Right to Counsel Fact Sheet

1. This fact sheet presents information about your right to an attorney. If you are suspected of committing a crime (for example, apprehended by the police or called into your commander's office) or anyone reads you your rights, this fact sheet applies to you and you should know about your rights to an attorney.

2. **THE BASIC RULE: DON'T SPEAK TO ANYONE WITHOUT YOUR ATTORNEY PRESENT!** The Constitution and Military Rules of Evidence guarantee suspects the right not to be questioned by police and military authorities without an attorney. This right helps to ensure, in essence, that you do not become the prosecutor's key witness at your own court-martial or Article 15 hearing. You are entitled to be assisted by a military defense counsel at no cost to you or you may retain civilian attorney at no expense to the government.

3. **WHAT TO DO IF YOU ARE QUESTIONED:** If you are read your rights and questioned, you should give your questioner (perhaps the police, your supervisor, someone in your chain of command) your name and unit and show them your ID card. You should then inform them that you do not wish to talk to them without an attorney. When you do this, all questioning must stop. If questioning does not stop, continue to remain silent. Do not lose your cool or otherwise be tricked into saying anything to anyone.

4. **WHAT TO EXPECT:** Once you ask for an attorney, most police and military officials will immediately stop asking you questions. Some may, however, encourage you to talk to them alone. They may tell you, for example, that only guilty people ask for a lawyer, which is simply not true. Remember, the person questioning you are trying to get information and believes you are guilty. Do not be fooled. Continue to ask for an attorney and do not answer questions.

5. **WHEN YOU EXERCISE YOUR RIGHTS:** When you tell your questioner that you do not want to talk to them without an attorney, all questioning must stop. Speak to an attorney as soon as possible. Usually an attorney at your local Trial Defense Service Office is readily available at no cost to you to discuss the matter under investigation with you in complete confidence. You can then decide whether it is in your best interest to make a statement. Your attorney will ensure you are interviewed fairly and will read any written statement you make to be sure it is accurate. If a military defense attorney cannot be reached, continue to remain silent. Ask the police to contact someone from your unit. If you are released to your unit, do not discuss your case with anyone – this includes police, social workers, psychiatrists, chaplains, anyone in your chain-of-command, your co-workers, friends, roommates, girl or boyfriends, and even your spouse.

6. **WHEN YOU ARE ENTITLED TO AN ATTORNEY:** You are entitled to a military defense attorney

(1) When you are suspected of a crime

Your attorney will discuss your rights as a suspect, including your right to have your attorney present for questioning, lineups, and writing and voice samples.

(2) When anyone reads you your rights

Your attorney will discuss your rights as a suspect and the charges against you.

(3) When anyone reads you an Article 15

Your attorney will advise you regarding the charges against you, possible defenses, and your rights during Article 15 proceedings.

(4) When charges are preferred against you

Your attorney will represent you at all stages of the criminal proceedings, including the Article 32 hearing and at all court hearings.

(5) When you are being administratively separated (chaptered) out of the National Guard Your attorney will consult with you regarding ways to challenge the chapter and will represent you at an Administrative Separation Board if you are entitled to one.

Know Your Rights

When being questioned by your chain of command, CID or Military Police Agents.

YOU HAVE THE RIGHT:

- To be told what criminal act you are suspected or accused of doing.
- To be told you have the right to remain silent.
- To be told any statements (oral or written) can and will be used against you.

The only statement you should make is the following:

“I do not waive my right to silence. I want an attorney. I want to leave”

If they wish to make a search without a Command Search Authorization or Search Warrant, say:

“I do not consent to any searches.”