

### **35.120 Who may serve on courts-martial.**

- (1) Any officer of or on duty with the National Guard or active militia shall be eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.
- (2) Any warrant officer of or on duty with the National Guard or active militia shall be eligible to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.
- (3)
  - (a) Any enlisted member of the National Guard or active militia 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, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under KRS 35.195 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 persons serve on it. After such request the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third (1/3) of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be convened 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.
  - (b) For the purposes of this section, the word "unit" shall mean a duly organized body of the National Guard or active militia not larger than a company or a squadron.
- (4)
  - (a) When it can be avoided, no subject person shall be tried by a court-martial any member of which is junior to him in rank or grade.
  - (b) When convening a court-martial, the convening authority shall detail as members thereof such persons as, in his 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 he is the accuser, or a witness for the prosecution, or has acted as investigating officer or as counsel in the same case.

**History:** Amended 1974 Ky. Acts ch. 108, sec. 5. -- Amended 1970 Ky. Acts ch. 56, sec. 15. -- Created 1954 Ky. Acts ch. 99, sec. 23, effective July 1, 1954.