

35.190 Duties of trial counsel and defense counsel.

- (1) The trial counsel of a general or special court-martial shall be a member in good standing of the state bar and shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.
- (2)
 - (a) The accused has the right to be represented in defense before a general or special court-martial under KRS 35.160 as provided in this subsection.
 - (b) The accused may be represented by civilian counsel at the provision and expense of the accused.
 - (c) The accused may be represented:
 1. By military counsel detailed under KRS 35.130; or
 2. By military counsel of the accused's own selection if that counsel is reasonably available as determined under paragraph (g) of this subsection.
 - (d) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (c) of this subsection shall act as his associate counsel unless excused at the request of the accused.
 - (e) Except as provided under paragraph (f) of this subsection, if the accused is represented by military counsel of his own selection under paragraph (c)2. of this subsection, any military counsel detailed under paragraph (c)1. of this subsection shall be excused.
 - (f) The accused is not entitled to be represented by more than one (1) military counsel. However, the person authorized under regulations prescribed under KRS 35.130 to detail counsel, in that person's sole discretion:
 1. May detail additional military counsel as assistant defense counsel; and
 2. If the accused is represented by military counsel of the accused's own selection under paragraph (c)2. of this subsection, may approve a request from the accused that military counsel detailed under paragraph (c)1. of this subsection act as associate defense counsel.
 - (g) The senior force judge advocate of the same force of which the accused is a member, shall determine whether the military counsel selected by an accused is reasonably available.
- (3) In any court-martial proceeding resulting in a conviction, the defense counsel may:
 - (a) Forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel may deem appropriate;
 - (b) Assist the accused in the submission of any matter under KRS 35.326; and
 - (c) Take other action authorized by this code.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 32, sec. 39, effective June 25, 2013. -- Amended 1970 Ky. Acts ch. 56, sec. 24. -- Created 1954 Ky. Acts ch. 99, sec. 37, effective July 1, 1954.

Legislative Research Commission Note (6/25/2013). An internal reference has been changed in subsection (2)(c)1. of this statute. In the enacted version (2013 Ky. Acts ch. 32, sec. 39), there is a reference to "Section 23 of this Act" (KRS 35.090). However, it is clear from examining earlier versions of this legislation drafted during the 2013 Regular Session of the General Assembly, and from a reading of Article 38 of the Uniform State Code of Military Justice, that a reference to Section 28 (KRS 35.130) was intended. Accordingly, under the authority of KRS 7.136(1), the Reviser of Statutes has changed the reference to read "KRS 35.130."