

# MANUAL FOR COURTS-MARTIAL UNITED STATES

(2012 EDITION)



(2) That the obtaining was done by using false pretenses;

(3) That the accused then knew of the falsity of the pretenses;

(4) That the obtaining was with intent to defraud;

(5) That the services were of a certain value; and

(6) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* This offense is similar to the offenses of larceny and wrongful appropriation by false pretenses, except that the object of the obtaining is services (for example, telephone service) rather than money, personal property, or articles of value of any kind as under Article 121. *See* paragraph 46c. *See* paragraph 49c(14) for a definition of “intent to defraud.”

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Obtaining services under false pretenses.

(1) *Of a value of \$500.00 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(2) *Of a value of more than \$500.00.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with intent to defraud, falsely pretend to \_\_\_\_\_ that \_\_\_\_\_, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from \_\_\_\_\_ services, of a value of (about) \$ \_\_\_\_\_, to wit: \_\_\_\_\_.

## 79. Article 134—(False swearing)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused took an oath or equivalent;

(2) That the oath or equivalent was administered to the accused in a matter in which such oath or equivalent was required or authorized by law;

(3) That the oath or equivalent was administered by a person having authority to do so;

(4) That upon this oath or equivalent the accused made or subscribed a certain statement;

(5) That the statement was false;

(6) That the accused did not then believe the statement to be true; and

(7) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* False swearing is the making under a lawful oath or equivalent of any false statement, oral or written, not believing the statement to be true. It does not include such statements made in a judicial proceeding or course of justice, as these are under Article 131, perjury (*see* paragraph 57). Unlike a false official statement under Article 107 (*see* paragraph 31) there is no requirement that the statement be made with an intent to deceive or that the statement be official. *See* paragraphs 57c(1), c(2)(c) and c(2)(e) concerning “judicial proceeding or course of justice,” proof of the falsity, and the belief of the accused, respectively.

(2) *Oath.* *See* Article 136 and R.C.M. 807 as to the authority to administer oaths, and *see* Section IX of Part III (Military Rules of Evidence) concerning proof of the signatures of persons authorized to administer oaths. An oath includes an affirmation when authorized in lieu of an oath.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, (in an affidavit) (in \_\_\_\_\_), wrongfully and unlawfully (make) (subscribe) under lawful (oath) (affirmation) a false statement in substance as follows: \_\_\_\_\_, which statement he/she did not then believe to be true.

## 80. Article 134—(Firearm, discharging—through negligence)

a. *Text of statute.* *See* paragraph 60.

b. *Elements.*

(1) That the accused discharged a firearm;