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Re: Normally, the Army won't let your loved one avoid a felony by enlisting – (UNLESS...)

Dear Fellow Attorney:

The Armed Services has long had a policy against allowing someone to go into the Service as a way of resolving a criminal case. However, if a defense lawyer can arrange it so there is no arrest, and nothing is publicly “pending,” then that policy can be overcome; there is not a *per se* “substitution” of going into the Armed Services in lieu of resolving the criminal case.

The problem is that there is less than a tenth of one percent chance that, for a felony, one can avoid arrest. Nevertheless, it can be done if the defense lawyer is able to persuade the authorities to make a Grand Jury “referral” rather than an arrest. This can be achieved in the following manner: First, neutralize the probable cause with a polygraph; second, create 30 letters of recommendation that show that the citizen-accused is charged with conduct flatly inconsistent with his excellent character and unblemished personal history; and, third, obtain at least one fact witness’ statement that raises a question as to the factual accuracy of the accusation.

Once a Grand Jury referral is accomplished, then there is no action “pending,” and therefore there is no Armed Services policy prohibiting a candidate processing into the military in that instance. It is a compelling argument to allow a 19-year-old (plus) to go into war on behalf of the United States rather than face aggravated sexual assault charges because of consensual sex with a barely 14-year-old, for which there is no legal defense in Texas (and which requires lifetime registration as a sex offender on the website of the Texas Department of Public Safety).

Recently, I achieved this result in a county not far from Dallas County because, in addition to the three items above, I was also able to get an affidavit from the Complainant and her mother that they had no objection to this process; and, I explained that the statute of limitations is ten years beyond the Complainant’s 18th birthday. So, my 19-year-old, male client may, technically, face prosecution when he comes back from war, though it is highly doubtful whether a future charge, if any, will be a felony, because the citizen-accused will have already risked his life for his country; and the sex, which will have occurred two to four years earlier (depending on re-enlistment), was undeniably consensual.

My website is www.mcmclaw.com.

Cordially,


Arch C. McColl, III

ACM/gap