**39.**  **Ineligibility and disqualification of officers for court-martial**.— (1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he—

(a) is an officer who convened the court; or

(b) is the prosecutor or a witness for the prosecution ; or

(c) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) is the commanding officer of the accused, or of the corps to which the accused belongs; or

(e) has a personal interest in the case.

(3) the provost-marshal or assistant provost-marshal is disqualified from serving on a general count-martial or district court-martial.

NOTES

*1. The term "eligible" is used with reference to an officer being subject to AA and of the necessary standing; that is to say it refers to the status of the officer, and involves no personal considerations*.

*2. The term "disqualified" is used with reference to the personal qualification of an officer. Except so far as is provided by* [*AR 40*](#AR40)*, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.*

3. The term "personal interest" will extend to even a remote or very small interest, e.g. in a charge relating to the theft of a sum of money, however small, belonging to an officers' mess, or a club, every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position, e. g., a person who holds, as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

*4. An officer should not be detailed to sit on any court-martial until regarded by his CO as competent to perform so important a duty.*