



STATUTORY INSTRUMENTS.

**S.I. No. 270 of 2009**



RULES OF THE SUPERIOR COURTS (COURTS-MARTIAL APPEAL  
COURT) 2009

**(Prn. A9/1011)**

S.I. No. 270 of 2009

RULES OF THE SUPERIOR COURTS (COURTS-MARTIAL APPEAL COURT) 2009

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by the Courts-Martial Appeals Act 1983, section 23, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 19th day of February, 2009.

John L. Murray

Richard Johnson

Elizabeth Dunne

Patrick O'Connor

Lyndon McCann

Patrick Groarke

Noel Rubotham

Maeve Kane

I concur in the making of the following Rules of Court.

Dated this 20th day of July, 2009.

DERMOT AHERN

Minister for Justice, Equality and Law Reform

*Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 24th July, 2009.*

S.I. No. 270 of 2009

RULES OF THE SUPERIOR COURTS (COURTS-MARTIAL APPEAL COURT) 2009

1. These Rules shall come into operation on the 20th day of July 2009.

2. Subject to section 3 and Schedule 1 of the Defence (Amendment) Act 2007, nothing in these Rules shall affect the validity of any step taken or any other thing done in proceedings under the Courts-Martial Appeals Act 1983 initiated before the commencement of these Rules. Any such proceedings shall, subject to the section and Schedule aforesaid and, save where the Courts-Martial Appeal Court in those proceedings otherwise orders, be continued and completed as if these Rules had not been made.

3. These Rules shall be construed together with the Rules of the Superior Courts 1986 to 2009 and may be cited as the Rules of the Superior Courts (Courts-Martial Appeal Court) 2009.

4. The Rules of the Superior Courts are hereby amended:

(i) by the substitution, for Order 86A, of the following:

“Order 86A

The Courts-Martial Appeal Court

I. Preliminary

1. In this Order:

“the Act of 1954” means the Defence Act 1954;

“the Act of 1983” means the Courts-Martial Appeals Act 1983;

“the Act of 2006” means the Defence (Amendment) Act 2006;

“Court” means the Courts-Martial Appeal Court and shall, in relation to any interlocutory application, include the Chief Justice or any Judge of the Supreme Court nominated by the Chief Justice to hear and determine such application;

“Court-Martial Administrator” means the Court-Martial Administrator appointed under Chapter IVA of Part V of the Act of 1954;

“detention barrack” means a building or part of a building which has been declared under section 232 of the Act of 1954 to be a detention barrack;

“Director” means the Director of Military Prosecutions appointed under Chapter IVB of Part V of the Act of 1954;

“exhibit” means any document or thing which has been produced and used in evidence at the trial court-martial, whether it is attached to the proceedings of the court-martial or not;

“legal aid (Courts-Martial Appeal Court) certificate” means a certificate for free legal aid referred to in section 28 of the Act of 1983;

“military judge” means a military judge appointed in accordance with section 184J of the Act of 1954;

“prison” includes a military prison;

“promulgation” means promulgation in accordance with rules for the time being in force made by the Minister for Defence in exercise of the powers conferred on him by section 240 of the Act of 1954;

“prosecutor” means the Director, and includes any prosecuting officer appointed under section 184F(1) of the Act of 1954 and any counsel or solicitor instructed by or representing either;

“the Registrar” means the Registrar of the Courts-Martial Appeal Court;

“trial court-martial” means a court-martial from the conviction, sentence, finding or order of which a person appeals to the Court, or from which a question of law is referred to the Court.

2. The forms set out in Appendix GG shall be used in all cases to which such forms are applicable and the forms referred to in this Order are those set out in such Appendix.

## II. Notice of Appeal

3. A person desiring to appeal to the Court shall serve on the Registrar a notice of appeal in the Form No. 1. The notice so served shall answer the question and comply with the requirements set forth on such form.

4. (1) Except as provided in sub-rule (2), every notice of appeal shall be served not later than twenty-one days after the date of the promulgation of the finding and sentence of the trial court-martial.

(2) In the case of a person convicted by a court-martial while serving outside the State with an International United Nations Force (as defined in section 1(1) of the Defence (Amendment) (No. 2) Act 1960), or while despatched for service outside the State for any purpose specified in section 3 of the Act of 2006, a notice of appeal shall be served not later than thirty days after the date of the promulgation mentioned in sub-rule (1).

5. When the Registrar receives a notice of appeal, he shall give notice thereof, in the Form No. 2, to the Director, the Court-Martial Administrator, the Deputy Chief of Staff (Support) of the Defence Forces and also, if the appellant is in a prison or detention barrack or if the operation of his sentence has been suspended or if he has been released on bail:-

to the Governor of such prison or detention barrack, as the case may be, and

to the Secretary General of the Department of Defence;

provided that the Registrar shall not be required to give such notice to the Governor of a prison or detention barrack if the appellant's notice of appeal has been forwarded to the Registrar by such Governor.

### III. Application for Review of Sentence

6. (1) An application by the Director to the Court under section 212B of the Act of 1954 and in accordance with section 22B of the Act of 1983 to review a sentence awarded by a court-martial shall be initiated by serving on the Registrar a notice of review in the Form No. 3. A copy of the notice so served shall be served on the convicted person and on the Court-Martial Administrator.

(2) The procedure on such an application shall follow, as nearly as may be, the procedure on an application by the Director of Public Prosecutions to the Court of Criminal Appeal under section 2(1) of the Criminal Justice Act 1993 to review a sentence imposed by a sentencing court on conviction of a person on indictment.

### IV. Reference of a Question of Law

7. (1) Where a question of law is referred to the Court by the summary court-martial under section 178G(5) of the Act of 1954 or section 22A of the Act of 1983, the Court-Martial Administrator (or other officer duly authorised for that purpose by the summary court-martial) shall, as soon as the reference containing the question has been settled and signed by the military judge, indorse thereon the name of the party (if any) who requested the reference; the name of the party who is to have carriage thereof, and the names and addresses of the solicitors (if any) for the parties. The Court-Martial Administrator or such officer shall, within seven days of such signature, lodge the original of such reference together with such other documents or materials as are prescribed in that regard by any Courts-Martial Rules for the time being in force, with the Registrar, who shall set down the same for hearing before the Court. As soon as the necessary papers are in order and ready, the reference shall come on to be heard according to its order in the list, unless the Court otherwise directs. The Court-Martial Administrator or such officer shall, immediately following lodgment of

the reference, serve notice of such signing and lodgment by registered post on every party who appeared upon the hearing of the appeal before the summary court-martial in respect of which the question is referred.

(2) After service of the notice of signing and lodgment, any interested party may obtain, on application to the Registrar, one or more copies of the reference and any other documents or materials lodged with it.

(3) The party having carriage of the reference shall, within twenty-one days after the service of the notice of signing and lodgment, lodge with the Registrar three copies of the reference, and of any other documents or materials lodged with it.

#### V. Enlargement of Time for Appealing

8. (1) The Court shall have power to enlarge the time appointed for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered notwithstanding that the application for the same is not made until after the expiration of the time appointed.

(2) An application to the Court for an enlargement of time within which notice of appeal may be served shall be in the Form No. 4.

(3) The form of application shall, in addition to specifying the grounds of such application, also specify the grounds on which the applicant proposes to base his appeal.

#### VI. Appeal where Fine is Imposed

9. (1) Where a person has, on his conviction, been sentenced to a fine, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation thereto.

(2) An appellant who has been sentenced to a fine and has paid the same in accordance with such sentence shall, if an appeal by him is successful, be entitled, subject to any order of the Court, to the return of the sum so paid by him.

#### VII. Suspension of Orders of Trial Court-Martial Pending Appeal

10. Where, on the conviction of a person, the trial court-martial directs, pursuant to section 213 of the Act of 1954, the payment by that person of a sum as compensation for any personal injury, expense, loss, damage or destruction occasioned by the offence of which he was convicted, the operation of such direction shall be suspended until the expiration of twenty-one clear days, or in any case to which rule 4(2) applies, thirty clear days after the date of promulgation of the finding

and sentence of the trial court-martial and, in cases where notice of appeal is duly given, the period of suspension of such direction shall continue until the determination of the appeal.

11. An appellant who has been directed by the trial court-martial to pay any sum as compensation and has paid the same in accordance with such direction shall, in the event of an appeal by him being successful, be entitled, subject to any order of the Court, to the return of the sum so paid by him.

#### VIII. Proceedings of Trial Court-Martial

12. (1) On request by the Registrar, the Court-Martial Administrator shall furnish to him the proceedings of the trial court-martial.

(2) A party interested in an appeal to the Court may obtain from the Registrar a copy of the proceedings of the trial court-martial or any part thereof as relates to the appeal upon payment of the proper charges.

#### IX. Exhibits for use of the Court and Appellants

13. (1) The Registrar may, on an application made to him by the appellant or the prosecutor, or shall where he considers the same to be necessary for the proper determination of any appeal or he is directed by the Court so to do, obtain and keep available for use by the Court, any documents, exhibits, or other things relating to the proceedings before the Court. Pending the determination of the appeal, such documents, exhibits, or other things shall be open for inspection by any party interested, as and when the Registrar may arrange. In suitable cases the Registrar may, in lieu of obtaining possession of any such documents, exhibits or other things, direct any person having the custody and control thereof to make the same available for inspection by any party interested at such time and place as the Registrar shall direct.

(2) The Court may, at any stage of an appeal, on the application of an appellant or the prosecutor, order any document, exhibit, or other thing connected with the proceedings to be produced to the Registrar by any person having the custody or control thereof.

(3) Service of any order made under this rule shall be personal, unless the Court otherwise orders, and for the purpose of effecting due service thereof the Registrar may require the assistance of the Garda Síochána, and it shall be their duty to carry out any directions of the Registrar under this rule.

14. (1) At any time after notice of appeal has been served, an appellant or the prosecutor, or the solicitor or other person representing either of them, may obtain from the Registrar copies of any documents or exhibits in his possession for the purpose of such appeal.

Such copies shall be supplied by the Registrar upon payment of the proper charges.

(2) A copy of the proceedings of the trial court-martial shall be supplied by the Registrar free of charge:

(a) to an appellant who has been granted a legal aid (Courts-Martial Appeal Court) certificate, and

(b) to any other appellant by order of the Court.

(3) Where an appellant who is not legally represented, or who has been granted a legal aid (Courts-Martial Appeal Court) certificate, requires from the Registrar a copy of any document or exhibit in his custody for the purposes of his appeal, he may obtain it free of charge if the Registrar considers it proper to supply the same.

#### X. Report to the Court

15. (1) The Registrar shall, whenever the Court directs him so to do in relation to any appeal, request the military judge who presided at the trial court-martial to furnish him with a report in writing upon the case generally or upon any point arising thereon, and the military judge so requested shall furnish the same in accordance with such request.

(2) The said report shall be made to the Court, and, except by leave of the Court, the Registrar shall not furnish any part thereof to any person.

#### XI. Suspension of the Operation of a Custodial Sentence

16. (1) An appellant who is a member of the Defence Forces and who desires to have the operation of a sentence of imprisonment or detention imposed on him suspended, pending the determination of his appeal, shall (unless the Court dispenses with this requirement) serve upon the Registrar notice in the Form No. 5 of his application for such suspension. The Registrar shall forthwith give notice of that application to the Director and, as soon as a date is fixed by the Court for the hearing of such application, shall notify the appellant, the Court-Martial Administrator and the Director.

(2) The Court may suspend the operation of a custodial sentence subject to such terms and conditions as it thinks fit.

(3) The Registrar shall notify the Governor of the prison or detention barrack, as the case may be, within which the appellant is confined, of the terms and conditions on which the Court suspends the operation of the appellant's sentence.

(4) An appellant the operation of whose sentence has been suspended shall, by the order of the Court, be required to be, and shall



be, personally present at each and every hearing of his appeal, and at the final determination thereof, and shall whenever his case is called on before the Court, surrender himself to such persons as the Court shall from time to time direct, and may be searched by them, and shall be deemed to be in their lawful custody, until further released on suspension of the operation of his sentence or otherwise dealt with as the Court shall direct. In the event of such appellant not being present at any hearing of his appeal, the Court may dismiss the same and issue a warrant for the apprehension of the appellant, in the Form No. 6, or may consider the appeal in his absence, or make such other order as it thinks fit.

(5) The Court may revoke or vary any order suspending the operation of a sentence of imprisonment or detention, and may on revocation issue a warrant in the Form No. 6 for the apprehension of the appellant and order him to be committed to a prison or detention barrack.

## XII. Bail

17. (1) An appellant who is not a member of the Defence Forces and who desires to be admitted to bail, pending the determination of his appeal, shall (unless the Court dispenses with this requirement) serve upon the Registrar notice in the Form No. 7 of his application for such bail. The Registrar shall forthwith give notice of such application to the Director and, as soon as a date is fixed by the Court for the hearing of such application, shall notify the appellant and the Director.

(2) The Court, when admitting such an appellant to bail, shall specify the amount (if any) in which the appellant and his surety (if any) shall be bound by recognisance.

(3) The Registrar shall notify the Governor of the prison or detention barrack, as the case may be, within which the appellant is confined, of the terms and conditions on which the Court has admitted the appellant to bail.

(4) Unless otherwise ordered by the Court, the recognisances of the appellant shall be taken before a person mentioned in section 22(3) of the Criminal Procedure Act 1967 and the recognisances of his surety (if any) shall be taken before a judge of the District Court.

(5) The recognisances shall be in the Form No. 8. The District Court clerk assigned to the District Court area in which the recognisance of a surety shall be taken shall give to such surety a certificate in the Form No. 9 which the surety shall sign and retain.

(6) The District Court clerk assigned to any District Court area before the judge of which any such recognisance shall be taken as aforesaid shall, in the Form No. 10, forthwith notify the Governor of

the said prison or detention barrack, as the case may be, of the perfection thereof.

(7) Where the Court admits a person who is in custody to bail the person shall not be released until there has been paid into court such amount (if any) or proportion of the amount (if any) in which the person and his or her surety or sureties (if any) are to be bound as the Court has determined.

(8) Where the Court decides to admit a person to bail with one or more sureties it may direct that a sum of money equivalent to the amount of bail (additionally to any amount specified in respect of the appellant's own recognisance in accordance with sub-rule (2)) be accepted in lieu of such surety or sureties. Where any moneys are required to be paid into court under a recognisance by a person in custody, or by any surety or sureties as a condition of that recognisance, or any security accepted in the court in lieu of such payment is required to be lodged in court, such moneys or security shall be deemed to be paid into court or lodged in court when paid to or lodged with the person mentioned in section 22(3) of the Criminal Procedure Act 1967 before whom the appellant's recognisance is taken or, as the case may be, the District Court Clerk assigned to the District Court area before the Judge assigned to which a surety's recognisance is taken.

(9) On payment to or lodgment with the said person of the required sums or security and on perfection of the recognisance, the appellant shall be released if he or she is in custody for no other cause than the offence in respect of which bail is granted.

(10) The said person before whom the appellant's recognisance is taken or, as the case may be, the District Court Clerk assigned to the District Court area before the Judge assigned to which a surety's recognisance is taken shall forthwith transmit the perfected recognisances and any moneys paid to or lodged with him in accordance with sub-rule (7) to the Registrar.

(11) An appellant who has been admitted to bail shall, by the order of the Court under which he was so admitted to bail, be required to be, and shall be, personally present at each and every hearing of his appeal, and at the final determination thereof, and shall, whenever his case is called on before the Court, surrender himself to such persons as the Court shall from time to time direct, and may be searched by them, and shall be deemed to be in their lawful custody until further released on bail or otherwise dealt with as the Court shall direct. In the event of such appellant not being present at any hearing of his appeal, the Court may dismiss the same and issue a warrant for the apprehension of the appellant, in the Form No. 11, or may consider the appeal in his absence, or make such other order as it thinks fit.

(12) The Court may revoke or vary any bail order or enlarge the amount conditioned for payment by recognisance of the appellant or of his sureties or substitute any other surety for a surety previously bound.

(13) An information laid by a member of the Garda Síochána or by a surety upon whose recognisance an appellant has been released on bail, who suspects that an appellant who has been released on bail is about to contravene a condition of his recognisance, for the purposes of an application under section 6(5) of the Bail Act 1997 shall be in the Form No. 12 and the Court's warrant for the apprehension of the appellant on granting such application shall be in the Form No. 13.

(14) An information laid by a member of the Garda Síochána that an appellant who has been released on bail has contravened a condition of his recognisance, for the purposes of an application under section 9(5) of the Bail Act 1997 shall be in the Form No. 12 and the Court's warrant for the apprehension of the appellant on granting such application shall be in the Form No. 13.

(15) The appellant shall, on being apprehended, be brought before the Court, and the Court shall make such order as is appropriate. Where such order is for the committal of the appellant, it shall be in the Form No. 14.

(16) At any time after an appellant has been released on bail the Court may revoke the order admitting him to bail, and issue a warrant in the Form No. 11 for his apprehension and order him to be committed to a prison or detention barrack.

(17) Nothing in this rule shall affect the right of a surety to apprehend and surrender into custody the person for whose appearance he has become bound, and thereby to discharge himself of his suretyship.

(18) On breach of the recognisance of an appellant, the Court may, notice having been given to any surety, make such order under section 9(2) of the Bail Act 1997 as is appropriate and notice of the making of such order shall be served by the prosecutor on the appellant and on any surety or sureties by prepaid ordinary post.

### XIII. Cause List

18. (1) The Registrar shall keep a register of all cases in which he has received a notice of appeal, which shall be open for public inspection.

(2) The Registrar shall also prepare from time to time a general list of cases to be dealt with by the Court and shall cause such list to be published at such times and in such a manner as shall be convenient for giving due notice to any parties interested in the hearing of such cases by the Court.

19. The Registrar shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the trial court-martial which are necessary for the proper determination of the appeal or application.

20. (1) Where an appellant is in custody, the Registrar shall notify the appellant and his solicitor (if any), the Governor of the prison or detention barrack, as the case may be, in which the appellant then is, the Irish Prison Service (if relevant) and the Deputy Chief of Staff (Support) of the Defence Forces of the probable day on which his appeal or application will be heard. The Irish Prison Service or Deputy Chief of Staff (Support) shall (where necessary) take steps to transfer the appellant to a prison or detention barrack or other custodial centre convenient for his appearance before the Court at such a reasonable time before the hearing as shall enable him to consult his legal adviser.

(2) When the date for the hearing of an appeal or application is fixed, the Registrar shall give notice thereof to the appellant and his solicitor (if any), the Director and the Court-Martial Administrator.

#### XIV. Abandonment of Appeal

21. (1) An appellant may, at any time after he has duly served notice of appeal or of application for enlargement of time, abandon his appeal or application by giving notice of abandonment thereof in the Form No. 15.

(2) When the Registrar receives a notice of abandonment of any appeal or application he shall give notice of such abandonment to all persons to whom he shall have given notice of the receipt by him of notice of such appeal or application.

#### XV. Examination of Witnesses

22. (1) An application for the attendance and examination before the Court of any witness shall be in the Form No. 16. There shall be annexed to such form a statement signed by the witness of the evidence which he proposes to give and (save in the case of any new evidence relating to the mental condition of the appellant or of the person charged, as the case may be, given by a consultant psychiatrist) of the reason why he did not give such evidence at the trial, unless the Court dispenses with such statement.

(2) Where an order is made for the attendance and examination of a witness, an order in the Form No. 17 shall be served upon him specifying the time and place at which he is to attend.

(3) Where the Court orders the examination of any witness to be conducted otherwise than before the Court, such order shall specify the person appointed as examiner to take, and the place of taking, such examination, and the witness or witnesses to be examined.

(4) The Registrar shall furnish to the person appointed to take the examination any documents or exhibits and any other material relating to the said appeal as and when requested so to do. Such documents and exhibits and other material shall after the examination has been concluded be returned by the examiner, together with any depositions taken by him, to the Registrar.

(5) When the examiner has appointed the day and time for the examination he shall request the Registrar to give notice thereof to the appellant and the Director and their legal representatives (if any) and, when the appellant is in a prison or detention barrack, the Governor of that prison or detention barrack, as the case may be. The Registrar shall cause to be served on every witness to be examined notice in the Form No. 18.

(6) Every witness examined before an examiner shall give his evidence upon oath to be administered by such examiner, except where any such witness, if giving evidence as a witness on a trial on indictment, need not be sworn.

(7) The examination of every such witness shall be taken in the form of a deposition in the same manner as is prescribed by section 14 of the Petty Sessions (Ireland) Act 1851 and unless otherwise ordered shall be taken in private. The caption in the Form No. 19 shall be attached to any such deposition.

(8) The expenses of any witness attending on the order of the Court, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court shall, if and so far as ordered by the Court, be defrayed up to an amount allowed by the Court as part of the costs of the State in or relating to the appeal.

(9) The provisions of rule 13(3) shall apply to the service of an order or notice on a witness under this rule.

(10) The appellant and the Director, or counsel or solicitor on their behalf, shall be entitled to be present at and take part in any examination of any witness to which this rule relates.

#### XVI. Hearing of Appeals and other Applications

23. (1) An appellant who is in custody shall be entitled, if he so desires, to be present in person at the hearing of his appeal and, subject to the prior consent of the Court being obtained, at any interlocutory applications in relation thereto.

(2) The provisions of sub-rule (1) shall apply *mutatis mutandis* to the right of an applicant for enlargement of time to be present at the hearing of such application.

24. Where a direction for payment of compensation has been given by the trial court-martial, the person in whose favour such direction was given, the appellant and, with the leave of the Court, any other person, shall be entitled to be heard before any order is made by the Court annulling or varying such direction for payment of compensation.

25. (1) When the Court makes an order finally determining an appeal, the Registrar shall give notice thereof in the Form No. 20 to the following persons:

the Appellant;

the Director;

the Deputy Chief of Staff (Support) of the Defence Forces;

the Court-Martial Administrator;

and also, if the appellant is in a prison or detention barrack or if the operation of his sentence has been suspended or he has been released on bail:

to the Governor of such prison or detention barrack, as the case may be, and

to the Secretary General of the Department of Defence,

provided that the Registrar shall not be required to give such notice to the appellant if he has been present or has been legally represented at the hearing.

(2) The Court-Martial Administrator, on receiving a notice pursuant to sub-rule (1), shall enter the particulars contained therein in the proceedings of the trial court-martial.

#### XVII. Miscellaneous

26. Except where otherwise provided by this Order, notice of every application to the Court shall be in accordance with the Form No. 21, and shall be served on the Registrar and the Director or appellant (as the case may be) and such other person, if any, as the Court may direct.

27. (1) Every notice of appeal shall be signed by the appellant himself except in the cases mentioned in sub-rules (2) and (3). Any other notice shall be in writing and signed by the person giving the same or his solicitor.

(2) Where an appellant or any other person authorised or required to give or send any notice is unable to write, he may affix his mark

thereto in the presence of a witness who shall attest the same and thereupon such notice shall be deemed to be duly signed by him.

(3) Where it is alleged that an appellant is insane at the time when any notice is required or authorised to be given by him, such notice may be given and signed by a solicitor or other person on his behalf.

(4) Any notice required or authorised to be given to the Court shall be addressed to and served upon the Registrar, The Courts-Martial Appeal Court, Four Courts, Dublin 7.

(5) In every case in which an appellant is not in a prison or detention barrack or is represented by a solicitor, his notice of appeal shall be served on the Registrar personally or by delivering same to the proper officer at the Office of the Court, Four Courts, Dublin 7, or by sending the same by ordinary pre-paid post addressed to the Registrar. In all other cases not specifically provided for, service of any notice or other document may be effected personally or by sending the same by ordinary pre-paid post addressed to the person on whom it is to be served.

28. The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal to any person who demands the same and to officers of courts, Governors of prisons and detention barracks, and such other officers or persons as he thinks fit and the Governor of a prison or a detention barrack shall cause those forms and instructions to be placed at the disposal of any prisoner desiring to make any application and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

29. It shall be the duty of the Garda Síochána of the district in which the appellant resided before his conviction or of the district from which he was committed or the Deputy Chief of Staff (Support) of the Defence Forces to enquire as to and report to the Registrar, when required by him, upon the means and circumstances of any appellant where such a question arises.

30. The Irish Prison Service, or the Deputy Chief of Staff (Support) of the Defence Forces, as appropriate, shall, on notice from the Registrar, cause from time to time such sufficient number of male and female prison officers, prisoner custody officers (within the meaning of section 4 of the Prisons Act 2007), or Defence Forces personnel to attend the sittings of the Court as, having regard to the list of appeals thereat, the Irish Prison Service or Deputy Chief of Staff (Support) shall consider necessary.

31. The performance of any duty imposed upon any person by this Order may be enforced by order of the Court.

32. Any warrant for the apprehension of an appellant issued by the Court shall be deemed to be, for all purposes, a warrant issued by a judge of the District Court for the apprehension of a person charged

with any indictable offence under the provisions of the Petty Sessions (Ireland) Act 1851, or any statute amending the same.

33. Every order of the Court, when drawn up, shall be dated the day of the week, month and year on which the same was made and, unless the Court otherwise directs, shall take effect accordingly. Every such order shall be issued out of the Office of the Court.

34. Non-compliance on the part of an appellant with this Order or with any rule of practice for the time being in force, shall not prevent the further prosecution of his appeal or application unless the Court shall so direct, but such appeal or application may be dealt with in such manner and upon such terms as the Court thinks fit.”;

(ii) by the deletion of the Appendix to Order 86A;

(iii) by the substitution in Order 125 for the definition of “Superior Courts” of the following definition:

““Superior Courts” means the Supreme Court, the High Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court and the Central Criminal Court”,

and

(iv) by the insertion of the forms in Schedule 1 as Appendix GG.



SCHEDULE 1

APPENDIX GG

No. 1

O. 86A, r.3

NOTICE OF APPEAL

COURTS-MARTIAL APPEAL COURT

To the Registrar of the Courts-Martial Appeal Court

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

Type of court-martial .....  
(summary, limited or general)

Place at which held.....Date(s) held.....

Date of promulgation of finding .....

Date of promulgation of sentence (if any) .....

Offence(s) of which \*charged/\*convicted  
.....  
.....  
.....

Sentence (if any)  
.....  
.....  
.....

The above-named accused person,

\*having been convicted by a court-martial of the offence(s) mentioned and \*  
(being now a prisoner in ..... ) \*(now living at.....)

\*in respect of whom a finding was made under section 202 of the Defence Act  
1954 that he was unfit to take his trial

\*in respect of whom a special finding was made under section 203 of the Defence  
Act 1954 that he was not guilty by reason of insanity of the offence charged

\*in respect of whom a decision was made by the said court-martial \*[not] to make an order of committal under \*section 202(1)(b) \*section 203(2) of the Defence Act 1954

Now I, the above-named appellant, \*[or the Director of Military Prosecutions] do hereby give you notice of appeal to the Courts-Martial Appeal Court against:

\*said conviction and/or sentence

\*said finding

\*said decision

on the grounds hereinafter set forth:

GROUPS OF APPEAL

Dated:..... Signed: .....  
(or mark) Appellant

Signature and address of witness attesting mark .....

.....

NOTE: An appellant (other than the Director of Military Prosecutions) should answer the following question:

Does the appellant desire to be present at the hearing of his appeal?

\*delete if inapplicable

NOTICE THAT NOTICE OF APPEAL HAS BEEN RECEIVED BY THE REGISTRAR

COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

This is to give you notice that the above-named appellant, who was convicted by

\*the summary, \*a limited \*a general court-martial on the .... day of ..... 20 ....., has lodged a notice of appeal against the \*(finding and) sentence

Dated: .....

Signed: .....

Registrar of the Courts-Martial Appeal Court

To:

the Director of Military Prosecutions at .....

the Court-Martial Administrator at .....

the Deputy Chief of Staff (Support) of the Defence Forces at.....

\*the Governor of the prison/detention barrack at.....

\*the Secretary General of the Department of Defence at.....

\*delete if inapplicable

NOTICE OF APPLICATION FOR REVIEW OF SENTENCE  
COURTS-MARTIAL APPEAL COURT

To the Registrar of the Courts-Martial Appeal Court

Particulars of Person Convicted:

No..... Rank..... Name .....

Unit.....

Type of court-martial: .....  
(summary, limited or general)

Place at which held ..... Date(s) held .....

Date of promulgation of finding: .....

Date of promulgation of sentence:.....

Offence(s) of which convicted: .....

.....

Sentence: .....

.....

It appearing to the Director of Military Prosecutions that the sentence awarded by the above court-martial to the above-named convicted person, he having been convicted by said court-martial of the offence(s) mentioned and \*(being now a prisoner in ..... )\*(now residing at ..... ) was unduly lenient, the Director of Military Prosecutions hereby gives you notice of an application to the Courts-Martial Appeal Court to review the said sentence on the grounds hereinafter set forth:

GROUND OF APPLICATION

*[Include, as appropriate:*

- (a) any fact or circumstance which it is alleged was taken into consideration by the court-martial in imposing sentence but was not relevant to the case;*
- (b) any fact or circumstance which it is alleged was relevant to the case but was not taken into consideration by the court-martial in imposing sentence.]*

Dated:..... Signed: .....

For Director

To: the above-named convicted person at .....

And to: the Court-Martial Administrator at .....

\*delete if inapplicable

NOTICE OF APPLICATION FOR ENLARGEMENT OF TIME WITHIN WHICH TO APPEAL

COURTS-MARTIAL APPEAL COURT

To the Registrar of the Courts-Martial Appeal Court

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

Type of court-martial ..... (summary, limited or general)

Place at which held ..... Date(s) held .....

Date of promulgation.....

Offence(s) of which convicted .....  
.....  
.....

Sentence .....  
.....  
.....

I, the above-named applicant, having been convicted by a court-martial of the offence(s) mentioned and being now a prisoner in ..... (or living at ..... ) give you notice that I will apply to the Courts-Martial Appeal Court for an enlargement of the time within which I may give notice of appeal. The grounds on which I apply for such enlargement are as follows:

The grounds on which I propose to base my appeal are as follows:

Dated..... Signed ..... (or mark) Applicant

Signature and address of witness attesting mark .....

NOTE:

The applicant should answer the following question:

Does the applicant desire to be present at the hearing of his application for an enlargement of the time within which to give such notice as aforesaid?

NOTICE OF APPLICATION BY APPELLANT FOR SUSPENSION OF THE OPERATION OF A CUSTODIAL SENTENCE PENDING APPEAL

COURTS-MARTIAL APPEAL COURT

To the Registrar of the Courts-Martial Appeal Court

Particulars of Appellant

No..... Rank..... Name.....

Unit.....

I, the above-named appellant, having been convicted by \*the summary, \*a limited \*a general court-martial, being now a prisoner in ..... and having given notice of appeal to the Courts-Martial Appeal Court, do hereby give you notice that I will apply to such Court to have the operation of the sentence of..... passed on me suspended pending the determination of my appeal on the following grounds:—

Dated:..... Signed: .....

NOTE:

The applicant should answer the following question:

Does the applicant desire to be present at the hearing of his application to have the operation of the sentence passed on him suspended pending the determination of his appeal?

\*delete if inapplicable

WARRANT FOR ARREST OF APPELLANT WHOSE SENTENCE HAS BEEN SUSPENDED

COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

To the Commissioner and members of the Garda Síochána and the Governor of..... Prison (or Detention Barrack).

Whereas the above-named appellant had the operation of the sentence passed on him suspended, and it has now been ordered that a warrant be issued for the arrest of the said appellant.

YOU ARE HEREBY COMMANDED to arrest the said appellant and to bring him to the said Prison or Detention Barrack, and there deliver him with this warrant into the custody of the said Governor and you, the said Governor, are hereby required to receive the said appellant into your custody and safely to keep him until further order of such Court.

Dated:..... Signed: .....

Registrar

NOTICE OF APPLICATION BY APPELLANT FOR BAIL PENDING APPEAL

COURTS-MARTIAL APPEAL COURT

To the Registrar of the Courts-Martial Appeal Court

Name of Appellant: .....

I, the above-named appellant, having been convicted by the summary court-martial (or a limited court-martial or a general court-martial), being now a prisoner in..... and having given notice of appeal to the Courts-Martial Appeal Court, do hereby give you notice that I will apply to such Court for bail \*(with sureties) on the following grounds:—

\*The undermentioned persons are willing to become sureties for my presence at the hearing and determination of the appeal in the sum of €..... each.

Name of surety .....

Occupation .....

Address .....

Name of surety .....

Occupation .....

Address .....

Dated:..... Signed: .....

\*delete if inapplicable



RECOGNISANCE PENDING APPEAL TO COURTS-MARTIAL  
APPEAL COURT

Name of Appellant .....

Be it remembered that whereas .....

was convicted by \*[the summary court-martial] \*[a limited court-martial] \*[a general court-martial], and was thereupon sentenced to ..... and now is in lawful custody and having duly appealed against his conviction and sentence to the Courts-Martial Appeal Court and having been granted bail pending the determination of his appeal on entering into his own recognisance \*(in the sum of €.....) with two sufficient sureties each in the sum of € ..... the said ..... of..... (occupation)..... of..... (occupation) and)..... of..... (occupation) personally come before the undersigned and severally acknowledge themselves to owe to the State the said several sums to be levied off their several goods and chattels, lands and tenements respectively to the use of the Minister for Finance if he the said ..... fail in the condition indorsed hereon.

Principal party.....

Taken and acknowledged this..... day of .....20.....,

at..... before me,..... a.....

\*Surety.....

\*Surety.....

Taken and acknowledged this..... day of ..... 20.....,

at..... before me,..... a Judge of the District Court.

CONDITION

The condition of the within written recognisance is such that if he the said..... shall personally appear and surrender himself at and before the Courts-Martial Appeal Court at each and every hearing of his appeal and at the final determination thereof and abide by the judgment of such Court and not depart or be absent from such Court at any such hearing without leave and in the meantime shall not depart out of the area to which the jurisdiction of such Court extends then this recognisance shall be void, otherwise it shall be of full force and effect.

The following to be filled in by the appellant and signed by him:—

When released on bail my residence to which any notices, etc., are to be addressed will be as follows:—

(Signed).....  
Appellant

\*delete if inapplicable

CERTIFICATE OF SURETY

Name of Appellant.....

This is to certify that you.....

of.....  
whose signature is below have been accepted by the District Court on  
this..... day of..... 20....., as surety for the  
above-named..... in the sum of €..... in a recognisance the  
condition whereof is that.....

(Signed).....  
District Court Clerk

I acknowledge that the above certificate is correct.

(Signed).....  
Surety

NOTICE OF PERFECTION OF RECOGNISANCE

Name of Appellant .....

To the Governor of .....

Take notice that (names and addresses) have this day, pursuant to an order of the Courts-Martial Appeal Court herein dated the ..... day of ..... 20 ....., entered into recognisances (state amounts) the condition of such recognisances being that:.....

Dated..... (Signed) .....

District Court Clerk

WARRANT FOR ARREST OF APPELLANT ON BAIL

COURTS-MARTIAL APPEAL COURT

Name of Appellant.....

To the Commissioner and members of the Garda Síochána and the Governor

of.....

Prison (or Detention Barrack).

Whereas..... was released on bail, and it has now been ordered that a warrant be issued for the arrest of the said .....

YOU ARE HEREBY COMMANDED to arrest the said ..... and to bring him to the said Prison (or Detention Barrack) and there deliver him with this warrant into the custody of the said Governor and you, the said Governor, are hereby required to receive the said ..... into your custody and safely to keep him until further order of this Court.

Dated..... (Signed) .....Registrar.....

INFORMATION FOR ARREST OF APPELLANT

Name of Appellant .....

The information of .....

of.....

who says on oath:—

1. I,....., do say that the above-named having been granted bail by the Courts-Martial Appeal Court, himself in the sum of €..... and with..... surety in the sum of €....., was released on such bail on condition that:

\*2. I became surety for the performance of the said condition by the said ..... in the sum of €..... I suspect that the said ..... is about to contravene a condition of his recognisance, namely..... and I therefore desire to surrender the said..... into custody and thereby discharge myself from my said recognisances.

OR

\*2. I am a member of the Garda Síochána. The said ..... has contravened a condition of his recognisance, namely.....,

3. I believe that the said ..... is now at .....

\*The basis for such suspicion

\*The basis for my so saying

is as follows:-

I therefore pray for a warrant for the arrest of the said.....

Signed.....

Informant

SWORN before me this .... day of ..... 20...

Signed.....

Judge of the Courts-Martial Appeal Court

\*delete where inapplicable

WARRANT ON INFORMATION OF SURETY

Name of Appellant .....

To the Commissioner and members of the Garda Síochána.

Whereas from the information on oath and in writing sworn on this day before M..... Justice ..... of the Courts-Martial Appeal Court by.....of .....

THE COURT BEING SATISFIED

that the said appellant..... having been released on bail by the Courts-Martial Appeal Court on recognisances the condition whereof was that..... and that

\*the said informant surety..... suspects that the said appellant.....is about to contravene a condition of his recognisance,

\*the said appellant..... has contravened a condition of his recognisance, and that the said appellant..... is believed to be at.....

YOU ARE HEREBY COMMANDED to arrest the said..... and to bring him before the Courts-Martial Appeal Court sitting at the Four Courts, Dublin 7 to the intent that he may be committed to.....and there to be detained according to law.

Dated..... (Signed) ..... Registrar

\*delete if inapplicable

COMMITTAL OF APPELLANT ON SURETY'S INFORMATION

Name of Appellant .....

To the Superintendent of the Garda Síochána at.....

and to the Governor of.....

Whereas on the..... day of .....20....., an information was sworn before M.... Justice ..... of the Courts-Martial Appeal Court by

\*..... as surety upon an application by said surety for a warrant for the apprehension of the above-named appellant,....., that he being a prisoner released on bail by the Courts-Martial Appeal Court was suspected of being about to contravene a condition of his recognisances and that the said surety..... was then desirous of surrendering the said appellant.

\*..... a member of the Garda Síochána upon an application by said member for a warrant for the apprehension of the above-named appellant, ....., that he being a prisoner released on bail by the Courts-Martial Appeal Court had contravened a condition of his recognisances.

And whereas the said appellant ..... being now before the Courts-Martial Appeal Court \*and surrendered by the said surety..... in discharge of his recognisance

You are therefore hereby commanded forthwith to deliver the said ..... to the Governor of ..... together with this warrant of committal and you, the said Governor, are required to receive the said.....into your custody and safely to keep him according to law.

Dated..... (Signed) .....

Registrar

\*delete if inapplicable

NOTICE OF ABANDONMENT  
COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name.....

Unit.....

I,..... having been convicted by the summary court-martial (or a limited court-martial or a general court-martial), and having duly sent to the Courts-Martial Appeal Court a notice of appeal against my said conviction and/or sentence, do hereby give you notice that I do not intend further to prosecute my appeal, and that I hereby abandon all further proceedings in regard thereto as from the date hereof.

Dated..... (Signed) .....  
(or mark) Appellant

Signature and address of witness.....

To the Registrar of the Courts Martial Appeal Court.



APPLICATION FOR ORDER FOR ATTENDANCE OF WITNESS

COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name.....

Unit.....

Take notice that the above named appellant..... will apply to the Courts-Martial Appeal Court for an order for the attendance and examination before such Court of the witness hereinafter specified, viz:

1. Name and address of witness:

.....

2. Whether such witness has been examined at the trial:

.....

3. If not, the reason why he was not so examined:

.....

4. On what matters it is proposed to examine him:

There is annexed hereto a statement signed by the said witness of the evidence which he proposed to give, and the reason why he did not give evidence at the trial.

Dated..... (Signed).....

To the Registrar of the Courts-Martial Appeal Court

and to the Director of Military Prosecutions.

ORDER TO WITNESS TO ATTEND BEFORE THE COURT FOR EXAMINATION

COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

To: .....

Of .....

You are ordered to attend before the Courts-Martial Appeal Court on the..... day of..... 20....., at the Four Courts, Dublin 7 at..... o'clock in the..... noon to give evidence on behalf of..... (add if required) and also to bring with you and produce at the time and place aforesaid (specify documents to be produced).

Dated..... (Signed) .....

Registrar

NOTICE TO WITNESS TO ATTEND BEFORE EXAMINER FOR EXAMINATION

COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

To: .....

of.....

Take notice that you are ordered by the Courts-Martial Appeal Court to attend at.....before....., the Examiner appointed by the said Court, on the..... day of 20....., at..... o'clock in the..... noon to give evidence on behalf of..... (add if required) and also to bring with you and produce at the time and place aforesaid (specify documents to be produced).

Dated.....(Signed).....

Registrar

CAPTION FOR DEPOSITION OF WITNESS EXAMINED BEFORE EXAMINER

COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

The deposition taken before the undersigned, being an Examiner duly appointed by the Courts-Martial Appeal Court in that behalf of ..... of ....., examined before me under an order of the said Court dated the..... day of..... 20....., in the presence of the said ..... appellant (or his counsel and solicitor) and counsel (or solicitor) for the Director of Military Prosecutions at ..... on the..... day of..... 20.....

The appellant personally (or by his counsel or solicitor) and counsel (or solicitor) for the Director of Military Prosecutions had full opportunity of asking questions of the said witness, to whom the deposition was read by me before being signed by the said witness.

The deposition of..... of..... who (upon oath duly administered by me) saith as follows:—

(here follows deposition)

(Signed)..... (Witness)

Taken before me this..... day of..... 20.....

..... Examiner

NOTICE OF RESULT OF APPEAL  
COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name.....

Unit.....

Take notice that the Courts-Martial Appeal Court has this day given judgment to the effect following, viz:

To the Appellant of .....

And to the Director of Military Prosecutions

And to the Court-Martial Administrator

And to the Deputy Chief of Staff (Support) of the Defence Forces

Dated..... (Signed) .....  
Registrar

NOTICE OF APPLICATION  
COURTS-MARTIAL APPEAL COURT

Particulars of Appellant

No..... Rank..... Name .....

Unit.....

Take notice that I the above-named appellant will apply to the  
Courts-Martial Appeal Court for ..... on the following  
grounds:—

Dated..... (Signed).....

To: the Registrar

and to: the Director of Military Prosecutions

EXPLANATORY NOTE

*(This does not form part of the instrument and does not purport to be a legal interpretation)*

These Rules prescribe the procedures, and forms, to be used, in connection with an appeal to the Courts-Martial Appeal Court established by the Courts-Martial Appeals Act 1983 and facilitate the operation both of that Act and the Defence Act 1954, as amended by the Defence (Amendment) Act 2007.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,  
CONTAE MHAIGH EO,  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)  
nó trí aon díoltóir leabhar.

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