

[This is an entirely new chapter.]

## Chapter 40

### APPEALS ARISING UNDER THE PENNSYLVANIA CODE OF MILITARY JUSTICE

#### **Rule 4001. Scope of Chapter**

This Chapter shall apply to all appeals from a court-martial as permitted by the Pennsylvania Code of Military Justice, 51 Pa.C.S. § 5100 *et seq.* The other chapters of the Pennsylvania Rules of Appellate Procedure shall also be applicable, provided such application is not inconsistent with the Pennsylvania Code of Military Justice or preempted by the rules contained in this Chapter.

**Official Note:** The Pennsylvania Code of Military Justice (“Code”), 51 Pa.C.S. § 5100 *et seq.*, provides for a right of appeal to the Superior Court from certain final judgments of courts-martial and specific interlocutory orders or rulings. This right of appeal under the Code is applicable only to proceedings involving “state military forces” or members of the Pennsylvania National Guard not in a status subjecting them to the exclusive jurisdiction of the United States.

#### **Rule 4002. Manner of Taking Appeal**

An appeal shall be taken by filing, in person or by first class, express, or priority United States Postal Service mail, a notice of appeal with the State Judge Advocate for the respective branch of service in which the court-martial has been convened.

If the notice of appeal is filed by first class, express, or priority United States Postal Service mail, the notice shall be deemed received by the State Judge Advocate for the purposes of filing on the date deposited in the United States mail, shown on a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the State Judge Advocate.

**Rule 4003. Time for Appeal.**

The notice of appeal required by Pa.R.A.P. 4002 shall be filed within the following time periods:

(a) A notice of appeal of a judgment of court-martial shall be filed within 30 days upon finality of judgment and issuance to the accused of a written advisement of the right to appeal the judgment to the Superior Court.

(b) A notice of interlocutory appeal shall be filed within three days of the date of the order or ruling being appealed.

**Official Note:** The judgment of court-martial in paragraph (a) becomes final upon the exhaustion or waiver of the administrative review process provided in Chapter 59 of the Code.

**Rule 4004. Content & Service of Notice of Appeal**

(a) Form. The notice of appeal shall be substantially in the following form:

PENNSYLVANIA NATIONAL GUARD  
COURT-MARTIAL

Commonwealth

v. Docket No. \_\_\_\_\_

Jonathon Doe, [rank], Defendant

NOTICE OF APPEAL

Notice is hereby given that [party name] appeals to the Superior Court of Pennsylvania from the final judgment of court-martial/interlocutory order or ruling in this matter, dated \_\_\_\_\_, \_\_ 20\_\_ and rendered by \_\_\_\_\_.

The State Judge Advocate in this matter is \_\_\_\_\_, having an address of \_\_\_\_\_.

/s/ \_\_\_\_\_  
\_\_\_\_\_

- (b) Statement of errors complained of on appeal. A concise statement of errors complained of on appeal in conformance with the following requirements shall be appended to the notice of appeal:
- (1) The statement shall set forth only those orders, rulings, and errors that the appellant intends to challenge.
  - (2) The statement shall concisely identify each order, ruling, or error that the appellant intends to challenge in sufficient detail to identify all pertinent issues for the authority that rendered those orders or rulings.
  - (3) Issues not included in the statement are waived.
- (c) Additional content for notice of interlocutory appeal.
- (1) The notice of interlocutory appeal shall be accompanied by a request for transcript when the relevant proceedings have not been otherwise transcribed. The State Judge Advocate shall arrange for the necessary transcription and inclusion into the record.
  - (2) When the Commonwealth appeals from an interlocutory order or ruling, the notice of appeal shall include a statement that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.
- (d) Service. A copy of the notice of appeal shall be served on all parties and the convening authority. If the appeal is from an interlocutory order or ruling, then a copy of the notice of appeal shall also be served on the presiding military judge.

**Official Note:** The requirements of subparagraph (c)(2) are set forth in 51 Pa.C.S. § 5919(c). Pursuant to 51 Pa.C.S. § 5719(c), a copy of the record of proceedings, including a verbatim transcript of proceedings and testimony, of any general or special court-martial resulting in conviction shall be given to the accused as soon as it is authenticated. This requirement obviates the need to include a request for transcript with a notice of appeal of a final judgment of conviction. However, this statutory provision does not extend to interlocutory matters. Therefore, a notice of appeal of an interlocutory order or ruling must include a request for transcript, as required by Pa.R.A.P. 4004(c)(1).

#### **Rule 4005. Filing of Notice of Appeal**

Three copies of the notice of appeal shall be filed with the State Judge Advocate, who immediately shall:

- (a) stamp it with the date of receipt. That date, or the date of earlier deposit in the United States mail as prescribed by Pa.R.A.P. 4002, shall constitute the date of filing of the appeal;
- (b) transmit a copy of the notice of appeal and the filing fee to the Prothonotary of the Superior Court; and
- (c) transmit a copy of the notice of appeal to the authority responsible for rendering the complained of error.

#### **Rule 4006. Opinion in Support of Order or Ruling**

The authority that entered the order or made the ruling giving rise to the notice of appeal shall file of record with the State Judge Advocate either:

- (a) a brief opinion of the reasons for the order or ruling or other errors complained of; or
- (b) specify in writing the place in the record where such reasons may be found.

If the case appealed involves an order or ruling issued by an authority who was not the authority entering the order or making the ruling giving rise to the notice of appeal, the authority entering the order or making the ruling giving rise to the notice of appeal may request that the authority who entered the earlier order or made the earlier ruling provide an opinion to be filed to explain the reasons for that order or ruling.

#### **Rule 4007. Record on Appeal**

- (a) Responsible office. The State Judge Advocate shall be responsible for the assembly and transmission of the record on appeal.
- (b) Composition of the record. The record shall consist of:
  - (1) The authenticated record of the court-martial, including a verbatim transcript of the proceeding and testimony, the pleadings, and evidence.

- (2) The order or ruling of the authority to be reviewed.
  - (3) The findings or report on which such order or ruling is based.
  - (4) Submissions, recommendations, reviews, and orders or rulings arising from post-trial administrative review and action.
  - (5) A copy of the written advisement of right to appeal.
  - (6) Any opinion of the reasons for the order or for the rulings or other errors complained of.
- (c) Certification and organization of record. The State Judge Advocate shall certify the contents of the record, which shall be organized with the documents arranged in chronological order, numbered, and affixed to the right or bottom edge of the first page of each document a tab showing the number of that document. Thereafter, the entirety shall be bound and shall contain a table of contents identifying each document in the record.
- (d) Time and notice. The State Judge Advocate shall file the record with the Prothonotary of the Superior Court within 60 days after the filing date of the notice of appeal. The Superior Court may shorten or extend the time prescribed in this paragraph. Upon filing, the State Judge Advocate shall mail a copy of the list of record documents to all counsel and to any unrepresented party.
- (e) Omissions from or misstatements of the record below. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the Superior Court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

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#### **Rule 1925. Opinion in Support of Order**

- (a) Opinion in support of order.

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**(3) Appeals arising under the Pennsylvania Code of Military Justice. - In an appeal arising under the Pennsylvania Code of Military Justice,**

**the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. See Pa.R.A.P. 4004(b).**