



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2018-OS-0019]

Joint Rules of Appellate Procedure for Courts of Criminal Appeals

AGENCY: Joint Rules of Appellate Procedure for Courts of Criminal Appeals Committee, Department of Defense.

ACTION: Notice of availability of final changes to the Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP).

SUMMARY: DoD updated the JRAP, which prescribe uniform procedures for the service Courts of Criminal Appeals. The changes implement the Military Justice Act of 2016 of the National Defense Authorization Act of 2017 and the 2018 Amendments to the Manual for Courts-Martial, United States. The approval authorities for these changes are the Judge Advocates General of the Army, Department of the Navy, Air Force, and Coast Guard.

DATES: The JRAP updates are effective January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Valdez, Clerk of the Court, United States Coast Guard Court of Criminal Appeals, (202) 795-6906, sarah.p.valdes@uscg.mil.

SUPPLEMENTARY INFORMATION: The Department of Defense published a notice of availability of proposed changes to the Joint Rules of Appellate Procedure for Courts of Criminal Appeals on April 17, 2018 (83 FR 16841) for a 30-day public comment period. No public comments were received. The revisions to the JRAP are substantial and need to be read in their entirety. The JRAP revisions are available electronically at the Federal eRulemaking Portal at

<http://www.regulations.gov> within Docket ID: DOD-2018-OS-0019. A summary of the most significant changes to the Joint Rules of Appellate Procedure are as follows:

Rule 5—Jurisdiction

Currently, appellants are entitled to an appeal as of right in cases in which the approved sentence extends to death, a punitive discharge, or confinement for a year or more. The Military Justice Act of 2016 of the National Defense Authorization Act of 2017 (MJA '16) changes provide for automatic review in cases where confinement of two years or more is approved instead of one. Additionally, if an appellant affirmatively requests review, Court of Criminal Appeals (CCA) now have jurisdiction in cases in which the appellant received an approved sentence of over six months, cases in which the United States has filed an appeal under Article 62 or 56(d) UCMJ. The new rule conforms to this new jurisdiction.

The new Rule 5 also conforms to the changes in jurisdiction noted below, including appeals of sentences by the United States and the review of contempt findings by military judges and magistrates.

Rule 20—Appeals by the United States, including the appeal of sentences

MJA '16 provides for the United States to appeal sentences to the CCAs on the basis that the sentence violates the law or is plainly unreasonable. The new Rule 20 (formerly Rule 21) provides for the filing of such an appeal within 60 days of the entry of judgment.

Rule 22—Briefs by amicus curiae

This is a new rule not responsive to an MJA '16 provision and addresses a subject not previously addressed in the joint rules, though service court rules have permitted amici. The new rule permits amici to file briefs by invitation of the court or my motion for leave to file. Unless the movant is a victim of an offense, potential amici must state whether the parties have consented to the filing.

Rule 28—Contempt

This is an entirely new rule necessitated by MJA '16 changes. CCAs may now review contempt findings made by military judges and magistrates. The new rule provides a procedure for this review.

Rule 29—Article 66(f) Proceedings

This is an entirely new rule necessitated by MJA '16 changes creating Art. 66(f)(3) (“Additional Proceedings”) and RCM 810, which effectively codify and expand *DuBay*. The rule mimics FRAP language, specifies that the Court retains jurisdiction when it orders a remand unless it explicitly dismisses the appellate proceedings, and it provides procedural guidance for hearings.

This notice is intended only to improve the internal management of the Federal Government.

It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

Dated: April 9, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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