

Appeals



**LCDR JAMES M. TOOHEY, JAGC, USN
VICTIMS' LEGAL COUNSEL
NAVAL BASE CORONADO
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Roadmap



- Basic Navy Appellate Practice
- Victim Appeal Rights in federal court
- Appellate Practice within VLC

Overview of Navy Appellate Practice



- Article 66 – Review by Court of Criminal Appeals
- Article 69 – Review in the Office of the Judge Advocate General
- Article 64 – Review by a judge advocate
- Article 62 – Appeal by the United States
- Article 67 – Review by the Court of Appeals for the Armed Forces
- Article 67a – Review by the Supreme Court
- Petitions for Extraordinary Relief

Article 66



- **Cases receive automatic appeal to NMCCA if:**
 - Approved sentence “extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more.”
- **Scope of review**
 - The Court “may act only with respect to findings and sentence approved by the convening authority.”
 - The Court may affirm findings and sentence “as it finds correct in law and fact and determines...should be approved.”
 - The Court “may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.”

Article 69 (Automatic)



- **Automatic review in the Office of the Judge Advocate General if:**
 - Trial was a general court-martial; and
 - Not otherwise reviewed under Article 66; and
 - Appeal not waived or withdrawn by accused.
- **Scope of review**
 - “If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both.”

Article 69 (Discretionary)



- **The Judge Advocate General may review:**
 - Cases not reviewed under Article 66 or under mandatory Article 69 review
- **Scope of review**
 - The review may be “on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.”

Article 64



- **Automatic review by judge advocate if:**
 - Not reviewed under Article 66; and
 - Not reviewed under Article 69.
- **Judge advocate must address the following:**
 - Jurisdiction over the accused and the offense
 - Charge and specification stated an offense
 - Sentence was within legal limits
 - Allegations of error raised by accused in writing.
- **Specific procedures in JAGMAN 0153**

Article 64



- **Person exercising general court-martial jurisdiction review required (64(b)) if:**
 - Reviewing judge advocate recommends corrective action;
 - Approved sentence includes dismissal, bad-conduct, or dishonorable discharge, or confinement for more than six months;
 - Action otherwise required by JAGMAN.
- **Article 69 review required if:**
 - Reviewing judge advocate recommends corrective action and person exercising general court-martial jurisdiction does not take action at least as favorable as recommended.

Article 62



- Interlocutory government appeals permitted only in specific circumstances:
 - Military judge's ruling that "terminates the proceedings with respect to a charge or specification."
 - Order or ruling excluding evidence that is "substantial proof of a fact material in the proceeding."
 - Orders dealing with disclosure, sanctions for nondisclosure, or refusal to issue a protective order to prevent disclosure of, classified information.

Article 67



- **The Court of Appeals for the Armed Forces shall review the following:**
 - Death sentences;
 - Cases certified to the court by TJAG; and
 - Cases granted review “upon petition of the accused and on good cause shown.”
- **Court may act:**
 - Only on findings and sentence approved by CA and affirmed or set aside by CCA
 - Only on issue raised by TJAG when case is certified
 - Only on issues specified in grant of review upon petition of the accused
 - Only with respect to matters of law.

Article 67a



- Decisions of CAAF are subject to review by the United States Supreme Court through the cert process.
- The Supreme Court may not review a refusal by CAAF to grant review on a petition.
 - Equal Justice for Our Military Act

Federal Crime Victims' Right to Appeal



- **Crime Victims' Rights Act, 18 U.S.C. § 3771**
 - If a victim asserts her rights under the Act and the district court denies the relief sought, she may petition the Court of Appeals for a writ of mandamus. (d)(3)
 - Government may also assert as error on appeal the denial of a crime victim's right. (d)(4)
 - Failure to afford a right cannot be grounds for new trial.
- **A federal crime victim has no right to a direct appeal.**

VLC Appellate Practice



- **FY14 NDAA**
 - Orders assessment of whether to extend military crime victims rights of enforcement contained within Crime Victims' Rights Act, including right to petition for writ of mandamus.
- **FY15 NDAA**
 - UCMJ Art. 6b amended to add section authorizing victim's petition for writ of mandamus to the Court of Criminal Appeals to "comply" with M.R.E. 412 and M.R.E. 513

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- Petitions for extraordinary relief
 - Non-party petitions for extraordinary relief
 - ✦ Authority rooted in non-party's interest to assert rights
 - *LRM v. Kastenberg*: “LRM’s position as a nonparty to the courts-martial, see Rule for Courts-Martial (R.C.M.) 103(16) does not preclude standing.”
 - *Kastenberg*: “There is long-standing precedent that a holder of a privilege has a right to contest and protect the privilege.”

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- **The All Writs Act, 28 U.S.C.S. § 1651**
 - “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”
 - ✦ All Writs Act applies to military courts. *Noyd v. Bond*, 395 U.S. 683, 695 n. 7 (1969).
 - All Writs Act does not expand jurisdiction.

VLC Appellate Practice



- **All Writs Act requires two determinations:**
 - “Whether the requested writ is ‘in aid of’ the court’s existing jurisdiction; and
 - Whether the requested writ is ‘necessary or appropriate.’”
- **“in aid of” includes:**
 - Petition to modify action taken within subject matter jurisdiction of military justice system;
 - Matter even where no finding or sentence has been entered
- **To establish subject matter jurisdiction:**
 - Harm must have had “potential to directly affect the findings and sentence.”

VLC Appellate Practice



- Potential VLC appellate issues:
 - *Kastenberg*:
 - ✦ “The military judge’s ruling has a direct bearing on the information that will be considered by the military judge when determining the admissibility of evidence, and thereafter the evidence considered by the court-martial on the issues of guilt or innocence – which will form the very foundation of a finding and sentence.”
 - Right to limited discovery
 - Right to request a continuance to have counsel present
 - Amicus opportunities

Extraordinary Relief Appeal Procedures



- Navy-Marine Corps Court of Criminal Appeals Rules of Practice and Procedure
 - Rule 20
- Court of Appeals for the Armed Forces
 - Rule 27
- Briefing
 - Establish jurisdiction and standing
 - Request stay of proceedings
 - Frame substantive issue

DISCUSSION

