
STATUTORY INSTRUMENTS

2009 No. 2657

The Court Martial Appeal Court Rules 2009

PART 9

REFERENCE TO THE COURT OF AN UNDULY LENIENT SENTENCE

Attorney General's reference of unduly lenient sentence

54.—(1) This Part applies when the Attorney General wants to refer a case to the court under section 273(1) of the 2006 Act.

(2) In this Part “respondent” means a person who serves a respondent’s notice.

Service of notice of reference and application for permission

55. The Attorney General must serve on the registrar—

- (a) any notice of reference of the case; and
- (b) any application for permission to refer the case.

Notice of reference and application for permission

56.—(1) An application for permission to refer a case must be made in writing and must—

- (a) give the required information and—
 - (i) the date and place of the relevant Court Martial decision; and
 - (ii) the relevant verdict and sentence; and
- (b) explain why the sentence in the case appears to the Attorney General unduly lenient, concisely outlining each argument in support.

(2) A notice of reference of a case must be made in writing and must—

- (a) include the same details and explanation as the application for permission to refer the case;
- (b) summarise the relevant facts; and
- (c) identify any relevant authorities.

(3) Where the court gives the Attorney General permission to refer a case, it may treat the application for permission to refer a case as the notice of reference of a case.

Registrar's notice to offender

57.—(1) The registrar must serve on the person to whom proceedings relate—

- (a) a notice of reference of the case;
- (b) an application for permission to refer the case.

(2) Where the Attorney General applies for permission to refer a case, the registrar must give the person to whom proceedings relate notice—

- (a) that the outcome of the reference may make a difference to his sentence, and in particular may result in a more severe sentence;
- (b) that he may serve a respondent's notice;
- (c) of the effect of regulations—
 - (i) 7(1) (entitlement of offender to be present at hearings),
 - (ii) 7(2) (offender in custody requires leave to be present at hearing),
 - (iii) 7(3) (power of court to pass sentence on offender not present), and
 - (iv) 9 (entitlement of offender to reasonable costs),of the 2009 Regulations.

Respondent's notice

58.—(1) A person to whom proceedings relate upon whom the registrar has served an application for permission to refer a case under this Part may serve a respondent's notice, and must do so if—

- (a) that person wants to make representations to the court; or
 - (b) the court so directs.
- (2) The respondent must serve the respondent's notice on—
- (a) the Attorney General; and
 - (b) the registrar.
- (3) The respondent must serve the respondent's notice not more than 14 days after—
- (a) the registrar serves the application; or
 - (b) a direction to do so.
- (4) The respondent's notice must—
- (a) state whether the respondent wants to make representations at the hearing of the application for permission or reference and whether he wants to do so in person or by a legal representative on his behalf;
 - (b) include or attach any application for the following, stating the reasons for the application—
 - (i) an extension of time within which to serve the respondent's notice; and
 - (ii) permission to be present at a hearing under regulation 7(2) of the 2009 Regulations.
- (5) The period in paragraph (3) may be extended by the court before or after the period expires.

Variation or withdrawal of notice of reference or application for permission

59.—(1) This rule applies where the Attorney General wants to vary or withdraw—

- (a) a notice of reference of a case; or
 - (b) an application for permission to refer a case.
- (2) The Attorney General—
- (a) may vary or withdraw the notice of reference of a case or the application for permission to refer a case without the court's permission by serving notice on—
 - (i) the registrar, and
 - (ii) the person to whom proceedings relate,before any hearing of the reference or application for permission; but

- (b) at any such hearing, may only vary or withdraw the notice of reference of a case or the application for permission to refer a case with the court's permission.