

48-2918. (KCMJ Art. 62) Appeal by the state. (a) (1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the adjutant general may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the adjutant general may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel 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.

(3) An appeal under this section shall be diligently prosecuted by appellate counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the governor for the adjutant general directly to the court of military review and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the court of military review may act only with respect to matters of law, notwithstanding subsection (c) of K.S.A. 48-2922.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

History: L. 1988, ch. 191, § 40; July 1.