

# HAWAII ADMINISTRATIVE RULES

## TITLE 7 DEPARTMENT OF DEFENSE

### SUBTITLE 1 MILITARY JUSTICE

---

## CHAPTER 7 PROCEDURES FOR APPEAL

---

[§7-7-1: Accused's appeal to the supreme court of the State](#)

[§7-7-2: Record on appeal](#)

---

### **§7-7-1 Accused's appeal to the supreme court of the State.**

(a) Procedures for appealing the decision of any court-martial to the supreme court shall be as provided in section 124A-105, HRS, and this chapter.

(b) The contents, form, and other requisites of an accused's notice of appeal to the supreme court of the State shall be as established by the Hawaii rules of penal procedure. The accused shall serve the convening authority, reviewing staff judge advocate, law officer, trial counsel, and the state judge advocate general each a copy of the notice of appeal within the time prescribed by the Hawaii rules of penal procedure.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-105)

[BACK TO TOP](#)

### **§7-7-2 Record on appeal.**

(a) Upon filing of the accused's notice of appeal under Rule 37, Hawaii rules of penal procedure, the trial counsel, including any substitute trial counsel appointed under section 124A-46, HRS shall prepare a record of the proceedings for use in the appeal. Trial counsel shall coordinate with the convening authority immediately upon being detailed to serve, to insure that all items which may later be required for the record are preserved and kept readily available.

(b) The record of a special or general court-martial shall contain all matters brought before the court and shall be authenticated in substantially the same manner as are like courts-martial in the federal military services, subject to section 124A-79, HRS.

(c) Prior to presenting the proposed record for authentication pursuant to 124A-79, HRS, the trial counsel shall afford the defense counsel a reasonable opportunity to review the proposed record and make

informal requests for changes thereto. If agreement cannot be reached as to any of the requested changes, the defense counsel shall have a reasonable opportunity to prepare written objections to the proposed record, which objections shall be forwarded with the proposed record by the trial counsel. The authenticating authority shall rule in writing on all the objections and amend the proposed record to conform to the rulings. The objections and rulings shall be appended to the record as an added exhibit. The record as thus constituted shall be authenticated by the signature of the authenticating authority. The authenticated record shall then be forwarded to the convening authority and a copy furnished to the defense counsel.

(d) Upon receipt of the authenticated record, the convening authority, with the advice and counsel of the reviewing staff judge advocate, shall take action as provided in subsections (e) to (h).

(e) If the authenticating authority has granted all the relief requested by defense counsel regarding objections to the record, and if defense counsel has at that time presented no additional objections, the convening authority shall approve the authenticated record and return the record to the trial counsel for distribution.

(f) If the authenticating authority did not grant all relief requested by defense counsel as to objections to the record, the convening authority shall consider the refusal to grant relief, and may grant additional relief, if the convening authority considers that action to be appropriate and in the interests of justice. The convening authority may only grant or deny additional relief and shall not overturn any previous grant of relief. The rulings of the convening authority shall be made in writing and the record appropriately amended. These rulings shall be appended to the record as another added exhibit, and the record as thus constituted shall be approved by the signature of the convening authority.;

(g) If, prior to approval of the record, the defense counsel presents to the convening authority any objections to the record which have not been ruled on by the authenticating authority, the convening authority may determine the objections, or may refer the objections to the authenticating authority for action thereon in writing.

(1) As to objections which the convening authority does not refer to the authenticating authority, the convening authority shall act as if the objections had been presented to the authenticating authority and all relief denied.

(2) As to objections which are referred to the authenticating authority, the convening authority, upon receipt of the authenticating authority's action thereon, shall proceed as set forth in subsections (e) or (f).

(h) Failure of the convening authority to rule on any objection constitutes the denial of further relief thereon.

(i) After action by the convening authority, the trial counsel shall distribute the approved record as follows:

(1) The original and the required number of copies to the clerk of the supreme court of the State of Hawaii; and

(2) One copy each to defense counsel, law officer, convening authority, designated staff judge advocate and the state judge advocate.

(j) Time limits may be imposed by rule of the service concerned, or if none, by the authenticating authority and convening authority to the end that the record on appeal shall be docketed with the supreme court as required by rules adopted by that court.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-105)

[BACK TO TOP](#)