

CHANGE
No. 4HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 6 June 1969LEGAL SERVICES
MILITARY JUSTICE

Effective 1 August 1969

AR 27-10, 26 November 1968, is changed as follows:

1. This change adds a new chapter 13 which establishes procedures for making application for relief under Article 69 of the Uniform Code of Military Justice and prescribes form for use therewith.
2. New material is indicated by a star.
3. Add new pages 13-1 through 13-5.
4. File this change sheet in front of the publication for reference purposes.

The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) to The Judge Advocate General, ATTN: JAGJ, Department of the Army, Washington, DC 20310.

By Order of the Secretary of the Army:

W. C. WESTMORELAND,
General, United States Army,
Chief of Staff.

Official:

KENNETH G. WICKHAM,
Major General, United States Army,
The Adjutant General.

Distribution:

Active Army, NG, and USAR: To be distributed in accordance with DA Form 12-9 requirements for AR, Legal Services—A (qty rqr block No. 50).

*This change supersedes DA message 884943, 24 October 1968.

TAGO 1252A—June 340-476 ₆₄₅—69

★CHAPTER 13

APPLICATION FOR RELIEF UNDER ARTICLE 69 OF THE UNIFORM CODE OF MILITARY JUSTICE, TITLE 10, UNITED STATES CODE, SECTION 869

13-1. Purpose. This chapter establishes procedures for making application for relief, on the grounds set forth in paragraph 13-2, from the findings or sentence, or both, of a court-martial case which has been finally reviewed, but has not been reviewed by the United States Army Court of Military Review (formerly Board of Review).

13-2. Authority. Article 69 of the Uniform Code of Military Justice (10 U.S.C. 869) provides that: "Notwithstanding section 876 of this title (article 76), the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by The Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused."

13-3. General requirements. *a.* A request for relief under that portion of Article 69 set forth in this chapter is not a part of the appellate process in a court-martial case; and no application for relief under the provisions of this chapter will be considered until the court-martial from which relief is sought is final. Finality is determined in accordance with Articles 65, 69, and 76 of the Uniform Code of Military Justice (10 U.S.C. 865, 869, and 876). A summary court-martial case, or special court-martial case not including an approved bad conduct discharge, is final when reviewed and found to be correct in law and fact by a judge advocate. See paragraph 94a(2), MCM, 1969 (Rev.) and paragraph 2-24. A general court-martial which has not been reviewed by the United States Army Court of Military Review (formerly Board of Review) is final when examined in the Office of The Judge Advocate General, and found to be correct in law and fact (para 103, MCM 1969 (Rev.)).

b. Relief under Article 69 and this chapter is authorized only where at least one of the four grounds set forth in paragraph 13-2 has been established to the satisfaction of The Judge Advo-

cate General. Application for relief on other grounds in any case final within the meaning of Article 76 should be addressed to the Army Board for the Correction of Military Records. See AR 15-185; section 1552 of title 10, United States Code. Denial of relief by The Judge Advocate General upon application under the provisions of this chapter does not preclude application to the Army Board for Correction of Military Records upon proper grounds.

13-4. Form of application. *a.* An application for relief should be submitted on DA Form 3499 (Application for Relief from Court-Martial Findings and/or Sentence under the Provisions of Title 10, United States Code, section 869). Forms may be obtained through normal publications supply channels. The form should be prepared in accordance with the requirements set forth in *d* below, as illustrated in figure 13-1.

b. Except as approved in this paragraph, the application must be signed by the individual convicted by court-martial. In those cases where the convicted individual is deceased, incapable of making application himself, or where his whereabouts are unknown, The Judge Advocate General may permit application to be made by such person as he shall determine to be competent and suitable, and to have a proper interest therein, including, but not limited to, a spouse, parent, or relative of the person convicted by court-martial substantially affected as a result of the findings or sentence, or both, which the applicant maintains should be vacated or modified.

c. The application must be submitted under oath or affirmation executed before an official authorized to administer oaths. A notary public is usually authorized to perform this function. See section 2903(c) of title 5, United States Code. Military personnel on active duty may execute the application before a judge advocate or other officer authorized by Article 136(a) of the Uniform Code of Military Justice (10 U.S.C. 936(a)) to administer oaths. Knowingly making a false statement in connection with an application for relief can be

punished by a \$10,000 fine, 5 years imprisonment, or both (18 U.S.C. 1001).

d. The application will contain the following information:

(1) Name of the individual convicted by court-martial.

(2) His service number, if any.

(3) His Social Security account number.

(4) His present rank or grade if on active duty or retired ("ret"), or "civilian," or "deceased," as applicable.

(5) Date of trial.

(6) Place of trial.

(7) The name of the organization convening the court-martial; *e.g.*, "Headquarters, 1st Battalion, 66th Infantry, 20th Infantry Division, Fort Blank, MO 63899."

(8) Type of court-martial.

(9) Articles of the Uniform Code of Military Justice (or Articles of War, where applicable) allegedly violated, and a brief description of the offenses charged; *e.g.*, "Charge I: Art. 121—Larceny of \$50 at Fort Blank, MO, on 21 Oct 68, from PFC Charles Smith. Charge II: Art. 134—Possession of marihuana at Fort Blank on 26 Oct 68."

(10) Pleas entered to the charges and specifications.

(11) Findings of the court-martial, sentence adjudged, and any later modification of the findings or sentence by the convening or other appropriate authority; *e.g.*, "CH. I: NG as charged; guilty of wrongful appropriation of \$10 from PFC Charles Smith at Fort Blank on 21 Oct 68. CH. II: Guilty. Sentence: Confinement at hard labor for 6 months, forfeiture of \$73 pay per month for 6 months. Confinement suspended on 20 Feb 69, for 3 months, with provision for automatic remission."

(12) A description of the errors asserted, including relevant facts. Legal authorities to support applicant's contentions may be included in this recital of alleged error, which may be presented in the form of a legal brief if applicant desires. To be eligible for relief under Article 69, the error alleged must be one encompassed by at least one of the four grounds set forth in that article:

(a) Newly discovered evidence, see paragraph 109d(2), MCM, 1969 (Rev.);

(b) Fraud on the court, see paragraph 109d(3), MCM, 1969 (Rev.);

(c) Lack of jurisdiction over the accused or the offense, see chapter IV, MCM, 1969 (Rev.); or

(d) Error prejudicial to the substantial rights of the accused, see Article 59(a), Uniform Code of the Military Justice (10 U.S.C. 859(a); paragraph 87e, MCM, 1969 (Rev.).

The burden is on the applicant to show that under the particular circumstances of his case applicable law warrants relief.

(13) Relief requested.

(14) Name and address of counsel, if any, who prepared the application for applicant.

(15) Applicant's address at time application is filed. Applicant should notify Headquarters, United States Army Judiciary, Office of The Judge Advocate General, ATTN: Examination and New Trials Division, Washington, DC 20315, of any change in address while this application is under consideration.

(16) If available to applicant, a copy of the court-martial order promulgating the findings, sentence, and action of the convening authority in the case, and a copy of any later modifying order(s).

(17) All matter which applicant desires to submit in support of his application, including, but not limited to, affidavits given under oath, official records, other documents, and memoranda of law, tending to support the errors alleged.

(18) Signature of the applicant.

(19) Signature, authority, and where applicable, the seal of an authorized official attesting that the application was executed by the named applicant under oath or affirmation, and the date of execution.

(20) A copy of the record of trial, if available, in connection with application for relief from the findings or sentence, or both, of a summary court-martial tried more than 1 year before application is made, or a special court-martial tried more than 10 years before application. *Applicant's copy of the record in other cases, including those tried by general court, should not be submitted.*

13-5. Submission of application. a. When the applicant seeks relief from the findings or sentence, or both, of a summary or special court-martial, and at the time of the application is a member of the command which convened the court-martial, or

of a unit within the same general court-martial jurisdiction as the command which convened the court-martial, the application will be submitted through the office of the staff judge advocate of that general court-martial jurisdiction. That office will forward the application, together with the original record of trial, copies of all court-martial orders in the case, any matter related to the allegations of the applicant, and pertinent and appropriate comment on these allegations, to the United States Army Judiciary.

b. When the applicant seeks relief from the findings or sentence, or both, of a general court-martial amenable to review under Article 69 and this regulation, and at the time of his application is a member of the command which convened the court-martial, the application will be submitted through the office of the staff judge advocate of that command, which will forward the applica-

tion, with appropriate comment, to the United States Army Judiciary.

c. All other applications will be submitted directly to The Judge Advocate General, Department of the Army, ATTN: Examination and New Trials Division, United States Army Judiciary, Washington, DC 20315.

13-6. Advice to applicants. a. Timely submission of applications for relief is urged. The applicant bears the burden of establishing an alleged impropriety. As time passes, it may become difficult, if not impossible, for the applicant to establish the facts upon which relief could have been granted. Allegations of impropriety, standing alone, usually will not be sufficient to warrant relief.

b. Military personnel: Consultation with a member of The Judge Advocate General's Corps, when available, before preparation of an application for relief, is encouraged.

6 June 1969

APPLICATION FOR RELIEF FROM COURT-MARTIAL FINDINGS AND/OR SENTENCE UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 869			DOCKET NUMBER (For TJAG use)
For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General.			
Read instructions on reverse side BEFORE completing application.			
1. NAME OF CONVICTED PERSON (last - first - middle initial)		2. SERVICE NUMBER	
Doe, John D.		RA 12 345 678	
3. SOCIAL SECURITY ACCOUNT NUMBER 987-65-4321			
4. PRESENT GRADE OR STATUS PVT E-1		5. DATE OF TRIAL 20 Nov 1968	
		6. PLACE OF TRIAL Fort Blank, Missouri	
7. COMMAND CONVENING COURT-MARTIAL HQ, 1st Battalion, 66th Infantry, 20th Infantry Division, Fort Blank.			
8. TYPE OF COURT-MARTIAL (<input type="checkbox"/> GENERAL <input checked="" type="checkbox"/> SPECIAL <input type="checkbox"/> SUMMARY)		9. OFFENSE(S) CHARGED (Article, and brief description of offense)	
		10. PLEA(S) NG NG	
11. FINDINGS OF THE COURT-MARTIAL, SENTENCE ADJUDGED, AND LATER MODIFICATIONS, IF ANY: CH. I: NG as charged; guilty of wrongful appropriation of \$10.00 from PFC Charles Smith at Fort Blank on 21 Oct 68. CH. II: Guilty. Sentence: Confinement at hard labor for 6 months, forfeiture of \$73.00 pay per month for 6 months. Confinement suspended on 20 Feb 69, for 3 months, with provision for automatic remission.			
12. I BELIEVE THE [FINDINGS AND] SENTENCE (strike out boxed words if inapplicable) IN THE ABOVE NAMED COURT-MARTIAL WERE NOT IN ACCORDANCE WITH LAW BECAUSE: (State fully the error you believe occurred, which must relate to at least one of the four grounds set forth in Article 69.) Hearsay testimony concerning uncharged acts of misconduct was admitted against me, over the objection of my counsel. As the record shows (R.7) my platoon sergeant testified that he had heard that I had stolen \$50.00 from PFC Smith and smaller sums of money from other soldiers. The president of the court erred when he overruled the objection of my counsel. The error was prejudicial, I assert, for there was evidence from two witnesses (R.8,9) that Smith loaned me the money, and had a grudge against me since I made E-4 and he didn't. Without the prejudicial hearsay, I would not have been convicted of Charge I. As to Charge II, no evidence was introduced to show that the substance found in my footlocker was, in fact, marihuana. It actually was green tea. The testimony of PFC Jones (R. 6) that I had told him that it was (#16)			
13. RELIEF REQUESTED Findings and sentence set aside.			
14. NAME AND ADDRESS OF COUNSEL ASSISTING WITH APPLICATION, IF ANY: (Include ZIP Code) None.			
15. ENCLOSED ARE: <input checked="" type="checkbox"/> A COPY OF COURT-MARTIAL ORDER(S) PROMULGATING RESULT OF TRIAL, AND LATER MODIFICATION(S), IF ANY. <input checked="" type="checkbox"/> SWEORN AFFIDAVITS, DOCUMENTS, OR OTHER MATTERS IN SUPPORT OF CLAIM.			
16. REMARKS (# 12 cont'd): Marihuana is hearsay as to the actual identity of the substance; and in any event, his testimony would not be sufficient evidence to sustain the conviction of Charge II. (# 15 cont'd): Inclosed are (1) Memorandum of law presented to the ct. by my counsel showing why platoon sergeant's testimony was inadmissible; (pretrial sworn statement of PFC Jones to CID. Note that in INCL 2 Jones stated that he had never seen me smoke the green tea, only brew and drink it.			

DA FORM 1 MAY 69 3499

Figure 18-1.

17. PRESENT ADDRESS OF APPLICANT (Include ZIP Code) (Forward notification of any change)
Company A, 1st Battalion, 66th Infantry, 20th Infantry Division, Fort
Blank, Missouri 63899

18. OATH OR AFFIRMATION: (See instruction 5)

I DO SOLEMNLY [SWEAR] XXXXXXXXXXXXXXXXX THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE STATEMENTS CONTAINED IN THIS APPLICATION (including accompanying matter submitted) ARE TRUE [SO HELP ME GOD]. I MAKE THIS ASSERTION UNDER THE PAINS AND PENALTIES OF FALSE SWEARING. (U.S. Code, Title 18, Section 1001 provides a penalty of not more than \$10,000 fine, five years imprisonment, or both, for knowingly making a false statement in connection with this application.)

John D. Doe

SIGNATURE OF APPLICANT

JOHN D. DOE

NAME OF APPLICANT

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS 8th DAY OF March, 1969.

(Seal)

Larry L. Lawyer

LARRY L. LAWYER
CPT JAGC

20th INF DIV, FT. BLANK, MO.

INSTRUCTIONS

(Read all instructions before completing form.)

1. Application for relief from the findings or sentence, or both, of a court-martial case which has been finally reviewed, but has not been reviewed by the United States Army Court of Military Review (formerly Board of Review) is governed by Chapter 13, Army Regulation 27-10, which is extracted, in part, in these instructions.

2. Article 69 of the Uniform Code of Military Justice (Title 10, U. S. Code, Section 869) provides that: "Notwithstanding section 876 of this title (article 26), the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused."

3. Relief is authorized only when (1) the court-martial from which relief is sought is final, and (2) at least one of the four grounds set forth in paragraph 2 above has been established to the satisfaction of The Judge Advocate General. A summary court-martial case, or special court-martial case not including an approved had conduct discharge, is final when reviewed and found to be correct in law and fact by a judge advocate. A general court-martial which has not been reviewed by the United States Army Court of Military Review (formerly Board of Review) is final when examined in the Office of The Judge Advocate General, and found to be correct in law and fact. Explanation of the four grounds on which relief may be granted is contained in the Manual for Courts-Martial, United States, 1969, (Revised edition); (a) newly discovered evidence, paragraph 1094(2); (b) fraud on the court, paragraph 109d(3); (c) lack of jurisdiction over the accused or the offense, chapter IV; (d) error prejudicial to the substantial rights of the accused, paragraph 87c, and Article 50(a), Uniform Code of Military Justice (Title 10, U. S. Code, section 859(a)).

4. Except as provided in this paragraph, the application must be signed by the individual convicted by court-martial. In those cases where the individual is deceased, incapable of making application himself, or where his whereabouts are unknown, The Judge Advocate General may permit application to be made by such person as he shall determine to be competent and suitable, and to have a proper interest therein, including, but not limited to, a spouse, parent, or relative of the person convicted by court-martial substantially affected as a result of the findings or sentence, or both, which the applicant maintains should be vacated or modified. If application is not signed by the individual convicted, full explanation should be made in ITEM 16.

5. The application must be submitted under oath or affirmation executed before an official authorized to administer oaths. A notary public is usually authorized to perform this function.

Military personnel on active duty may execute the application before a judge advocate or other officer authorized by Article 136(a) of the Uniform Code of Military Justice to administer oaths. Knowingly making a false statement in connection with an application for relief can be punished by a \$10,000 fine, five years imprisonment, or both.

6. Applicant's entry in ITEM 12 should describe the error(s) on which the request for relief is based. Relevant facts which support the applicant's contentions should be included. Legal authorities may be presented in this section, or may be attached in the form of a legal brief, if applicant desires. Other matters tending to support applicant's allegations of error or impropriety, including, but not limited to, sworn affidavits, official records, and other documents, may be attached, and should be listed in ITEM 16. The applicant bears the burden of establishing an alleged impropriety. Unsupported allegations of matters outside the record of trial will seldom be sufficient to warrant relief.

7. A copy of the court-martial order promulgating the findings, sentence, and action of the convening authority in the case, and a copy of any later modifying order(s), if available to the applicant, should be submitted with the application.

8. A copy of the record of trial should be submitted in connection with application for relief from a summary court-martial tried more than one year before application is made, or a special court-martial tried more than ten years before application, if available. Applicant's copy of the record in other cases, including those tried by general court, should not be submitted.

9. If the applicant is a member of the command which convened the court-martial, or of a unit within the same general court-martial jurisdiction, the application should be submitted through the office of the staff judge advocate of that general court-martial jurisdiction. In all other cases, applications will be submitted directly to The Judge Advocate General, Department of the Army, ATTN: Examination and New Trials Division, United States Army Judiciary, Washington, D. C. 20315.

10. Submit only the original of this form.

11. Type, or print all entries in ink.

12. If space allotted is insufficient, attach additional sheet(s), indicating item number continued thereon.

13. Complete all items; if inapplicable, enter "NONE."

14. Applicant should send notice of change in address while application is pending to The Judge Advocate General at the address shown in instruction 9 above.

15. Applicant will be notified of receipt of application by the Judge Advocate General, and the result of review, when completed.

FOR TJAG USE ONLY				
ORIG. R/T ORD	RECEIVED	RETURNED	ACTION AND DATE	APPL. NOTIF.

TAGO 1252A

Figure 13-1—Continued.