

VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 6)

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Procedures for Appeals of Honor Dismissals

RULE ONE: Scope of Rules and Definitions

These rules set forth the procedures for an appeal of a conviction by the Honor Court.

- a. "Board" means the Board of Visitors of the Virginia Military Institute.
- b. "Committee on Appeals" or "Committee" means the standing Committee on Appeals of the Board of Visitors.
- c. "Corps of Cadets" means the Corps of Cadets of the Virginia Military Institute.
- d. "Former Cadet" means the individual dismissed from the Institute as a result of a conviction by the Honor Court.
- e. "Former Cadet's Advocate" means the person chosen by the appellant to represent or assist the Former Cadet in the conduct of the appeal.
- f. "Institute Representative" means the staff officer, an employee of the Virginia Military Institute, designated by the Superintendent to act as administrative staff to the Committee on Appeals.
- g. "Honor Code" means the Honor Code of the Virginia Military Institute Corps of Cadets.
- h. "Honor Court" means the court and Cadet Jury duly constituted pursuant to VMI's Honor System.
- i. "Institute" or "VMI" means the Virginia Military Institute.
- j. "Secretary of the Board" means the person appointed by the Board of Visitors in accordance with governing By-Laws. The Secretary of the Board also typically serves as the Institute Representative to the Committee on Appeals.
- k. "Superintendent" means the Superintendent of the Virginia Military Institute.
- l. "Superintendent's Representative" means a member of the faculty or staff of the Virginia Military Institute appointed by the Superintendent as to oversee the fair, orderly, and efficient performance of Honor Court investigations, arrests, prosecutions, and trials, and designated by the Superintendent to represent the Institute on appeals of an Honor Court conviction.

RULE TWO: Roles of Committee on Appeals

The Committee on Appeals may, in its discretion, consider and decide appeals of Honor Court convictions. Appeals to the Committee are not a matter of right. Any appeal granted shall be permitted and conducted pursuant to such procedures as the Committee may adopt and amend from time to time. The Committee may affirm a conviction, reverse a conviction, or reverse the conviction and remand the matter to the Superintendent or to the Honor Court for further action in accordance with the Committee's direction.

- a. The only available grounds for appeal are:
 1. New evidence not known to or reasonably discoverable by the Former Cadet at the time of the trial, which, if it had been presented at the trial would, more likely than not, have produced a different result; or
 2. Error in the conduct of an investigation or trial that is of such magnitude as to deny fundamental fairness.

- b. In an Honor Court proceeding, sufficiency of the evidence is a matter for the Cadet Jury. The Committee will not hear an appeal on the ground that the evidence was insufficient to support a conviction, unless there was no evidence upon which the Former Cadet could have been found guilty, such that a conviction violates the principle of fundamental fairness.
- c. A case will be remanded when, in the judgment of the Appeals Committee, justice to the Corps of Cadets and the Former Cadet requires presentation of further evidence, or argument of additional points. The Committee may remand the entire case for a new trial or remand for trial on certain designated issues.
- d. A member of the Committee on Appeals is disqualified from hearing an appeal if the member has discussed the issues presented by the appeal with any interested person or party, or as may otherwise be required by law. Discussion of the underlying facts of the Honor Court charges against the Former Cadet at routine meetings of the Board or the Committee shall not be disqualifying.
- e. The Committee on Appeals shall not hear any appeals of disciplinary dismissals brought by dismissed cadets. However, the Superintendent may, in his sole discretion, seek the input of the Committee on appeals on any disciplinary dismissal.
- f. The Committee on Appeals shall consider requests for waiver of state cadetship requirements and recommend action on said requests to the full Board.
- g. The Committee does not hear appeals for academic dismissals.

RULE THREE: Notice of Honor Court Appeal and Request for Transcript

- a. A Former Cadet who wishes to appeal their Honor Court conviction shall submit to the Secretary of the Board a written and signed Notice of Appeal. Such notice shall be sufficient if, and only if, it clearly and without qualification states the Former Cadet's intent to appeal the conviction.
- b. The Notice of Appeal and request required by this Rule may be filed by mailing, by hand delivery, fax, or by scanning and submitting by electronic transmission. It must be received by the Secretary of the Board within twenty (20) business days of the date of the Institute's order of dismissal. An e-mail is insufficient for establishing proper notice.
- c. All communications relating to an appeal that any legal counsel for the Former Cadet desires to have with the Institute Representative, the Superintendent's Representative, representatives of the Honor Court, witnesses, or jurors serving on any Honor Court case, etc., shall be through the Institute's legal counsel.

RULE FOUR: Preparation of Record on Appeal.

- a. The Committee will not consider a request for or hear an appeal without the benefit of a transcript of the Honor Court proceeding from which the appeal is taken. The cost of production of the transcript shall be borne by the Former Cadet. Upon receipt of a Notice of Appeal, the Institute Representative shall provide the Former Cadet with the cost for VMI to obtain a transcript of the proceeding. The Former Cadet shall remit the cost of the transcript to VMI within fifteen (15) business days of the receipt of notification of the cost to obtain the transcript. After the necessary funds have been obtained from the Former Cadet, VMI will order the transcript. However, upon timely application, the Institute Representative to the Committee on Appeals may, in his or her sole discretion, waive the requirement that the Former Cadet bear the cost of preparing the record on appeal, modify the amount to be paid by the Former Cadet, or deny such a request. To make this decision, the Former Cadet must demonstrate that he or she (and their parents if

the Former Cadet is a dependent) are financially unable to bear the costs. Appropriate cadet financial records maintained by the Institute may be examined in this process. Decisions by the Institute Representative will be considered final. Transcripts will be delivered to the Institute Representative when completed by the transcribing agency and shall be considered an educational record for purposes of the Family Educational Records Privacy Act (FERPA).

- b. Upon receipt of the transcript, the Institute Representative shall maintain a copy, together with copies of all documentary exhibits and other records related to the trial, in a separate file, which shall constitute the Record on Appeal. If deemed necessary by the Institute's legal counsel, the transcript may be redacted to exclude information protected by FERPA that pertains to other cadets who are not the subject of the appeal proceeding.
- c. The Institute Representative shall promptly deliver (either by hand or return receipt requested) a copy of the full Record on Appeal to the Former Cadet.

RULE FIVE: Filing of Written Briefs.

- a. Within fifteen (15) business days of the Former Cadet's receipt of the Record on Appeal, the Former Cadet shall file with the Institute Representative a statement of the basis for the appeal. If the Former Cadet's grounds for appeal include new evidence not known to or reasonably discoverable by the Former Cadet at the time of the trial (RULE TWO (a)(1) above), the Former Cadet must provide such new evidence to the Institute Representative with the statement of the basis for the appeal.
- b. Within ten (10) business days after the filing of such statement, the Superintendent's Representative shall file with the Institute Representative the Institute's response. The Institute Representative will provide a copy of the Institute's Response to the Former Cadet.

RULE SIX: Form and Content of the Statement and Response.

- a. No particular form is necessary for the written Statement or Response required by Rule Five except that each shall contain brief and concise statements of the grounds for the appeal, or refusal of the appeal, the facts relied upon, and the arguments in support of granting or refusing the appeal, respectively.
- b. Each document shall be double-spaced and no more than 15 pages in length, exclusive of appendices or exhibits, if any.

RULE SEVEN: Scheduling of Hearing.

- a. After the filing of the Statement and Response required by Rule Five, the Institute Representative shall promptly notify the Chairman of the Committee on Appeals that the Former Cadet's request for an Honor Court appeal is ready to be considered.
- b. Upon receipt of notification, the Chairman of the Committee shall appoint a subcommittee of no less than three members of the Committee. The Institute Representative shall deliver to the members of the subcommittee copies of the Record on Appeal and the Statement and Response.
- c. The subcommittee shall review the Record on Appeal, the Statement and Response, and determine whether or not the appeal will be heard within fifteen (15) business days of receipt of the Record. Upon the favorable vote of one or more of the three members of the subcommittee, the requested appeal shall be heard by the full Committee.

- d. If the hearing before the full Committee is granted, the Institute Representative shall make the appropriate arrangements with the Former Cadet and the Superintendent's Representative to place the hearing on the agenda for the Committee's next regularly scheduled meeting, or in the Committee's sole discretion, at some other time convenient to the Committee members and the Former Cadet.
- e. If the subcommittee refuses the appeal, the Institute Representative shall inform the Former Cadet that the request has been refused.

RULE EIGHT: Hearing by Committee on Appeals and Decision on Appeal.

- a. At the hearing of an appeal by the Committee, the Committee shall hear the oral presentations of the parties and ask any questions they deem necessary to a full consideration of the appeal. The Committee on Appeals, in its discretion, may impose reasonable restrictions upon the time available to the parties for the argument of their respective positions. The Former Cadet may present argument to the Committee on his or her own behalf or allow an advocate of the Former Cadet's choosing to do so. Anyone may serve as an advocate, including an attorney retained by the Former Cadet.
- b. After hearing the oral presentations, the Committee will conduct its deliberation in private and report its decision to the Institute Representative, who shall communicate the result to the Former Cadet and the Superintendent's Representative. A majority vote of the members of the Committee present to hear the appeal, but no fewer than three, shall be necessary to overturn a conviction.
- c. If the Appeals Committee overturns an Honor Court conviction, the exonerated cadet, upon re-entering VMI, will only be compensated for incurred tuition, room and board and all fees, for that semester, equal to those costs during the semester in which the cadet was dismissed.

FOR THE SUPERINTENDENT:

John M. Young
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Chief of Staff

OPR: EA to Superintendent