

to fees and mileage will not be impaired by voluntary compliance with the request and that a voucher for fees and mileage will be delivered to the witness promptly on being discharged from attendance.

*Formal service.* Formal service is advisable whenever it is anticipated that the witness will not comply voluntarily with the subpoena. Appropriate fees and mileage must be paid or tendered. See Article 47. If formal service is advisable, the person who issued the subpoena must assure timely and economical service. That person may do so by serving the subpoena personally when the witness is in the vicinity. When the witness is not in the vicinity, the subpoena may be sent in duplicate to the commander of a military installation near the witness. Such commanders should give prompt and effective assistance, issuing travel orders for their personnel to serve the subpoena when necessary.

Service should ordinarily be made by a person subject to the code. The duplicate copy of the subpoena must have entered upon it proof of service as indicated on the form and must be promptly returned to the person who issued the subpoena. If service cannot be made, the person who issued the subpoena must be informed promptly. A stamped, addressed envelope should be provided for these purposes.

For purposes of this Rule, *hardship* is defined as any situation which would substantially preclude reasonable efforts to appear that could be solved by providing transportation or fees and mileage to which the witness is entitled for appearing at the hearing in question."

(j) The Discussion immediately following R.C.M. 703(e)(2)(G)(i) is amended to read as follows:

"A warrant of attachment (DD Form 454) may be used when necessary to compel a witness to appear or produce evidence under this rule. A warrant of attachment is a legal order addressed to an official directing that official to have the person named in the order brought before a court.

Subpoenas issued under R.C.M. 703 are Federal process and a person not subject to the code may be prosecuted in a Federal civilian court under Article 47 for failure to comply with a subpoena issued in compliance with this rule and formally served.

Failing to comply with such a subpoena is a felony offense, and may result in a fine or imprisonment, or both, at the discretion of the district court. The different purposes of the warrant of attachment and criminal complaint under Article 47 should be borne in mind. The warrant of attachment, available without the intervention of civilian judicial proceedings, has as its purpose the obtaining of the witness's presence,