

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,

testimony, or documents. The criminal complaint, prosecuted through the civilian Federal courts, has as its purpose punishment for failing to comply with process issued by military authority. It serves to vindicate the military interest in obtaining compliance with its lawful process.

For subpoenas issued for a pretrial investigation pursuant to Article 32 under subsection (f)(4)(B), the general court-martial convening authority with jurisdiction over the case may issue a warrant of attachment to compel production of documents."

(k) The Discussion immediately following R.C.M. 703(f)(1) is amended to read as follows:

"Relevance is defined by Mil. R. Evid. 401. Relevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue. A matter is not in issue when it is stipulated as a fact. The discovery and introduction of classified or other government information is controlled by Mil. R. Evid. 505 and 506."

(l) The following Discussion is added immediately after R.C.M. 703(f)(4)(B):

"The National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81, § 542, amended Article 47 to allow the issuance of subpoenas duces tecum for Article 32 hearings. Although the amended language cites Article 32(b), this new subpoena power