

“(C) *Who may issue.*

(1) A subpoena to secure evidence may be issued by:

(a) the summary court-martial;

(b) detailed counsel representing the United States at an Article 32 investigation;

(c) the investigating officer appointed under R.C.M. 405(d)(1);

(d) after referral to a court-martial, detailed trial counsel;

(e) the president of a court of inquiry; or

(f) an officer detailed to take a deposition.

(2) A subpoena to secure witnesses may be issued by:

(a) the summary court-martial;

(b) after referral to a court-martial, detailed trial counsel;

(c) the president of a court of inquiry; or

(d) an officer detailed to take a deposition.

(i) R.C.M. 703(e)(2)(D) is amended to read as follows:

“(D) *Service.* A subpoena may be served by the person authorized by this rule to issue it, a United States Marshal, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and by providing to the person named travel orders and a means for reimbursement for fees and mileage as may be

prescribed by the Secretary concerned, or in the case of hardship resulting in the subpoenaed witness's inability to comply with the subpoena absent initial government payment, by providing to the person named travel orders, fees, and mileage sufficient to comply with the subpoena in rules prescribed by the Secretary concerned."

(j) R.C.M. 703(e)(2)(G)(ii) is amended to read as follows:

"(ii) *Requirements.* A warrant of attachment may be issued only upon probable cause to believe that the witness was duly served with a subpoena, that the subpoena was issued in accordance with these rules, that a means of reimbursement of fees and mileage was provided to the witness or advanced to the witness in cases of hardship, that the witness is material, that the witness refused or willfully neglected to appear at the time and place specified on the subpoena, and that no valid excuse is reasonably apparent for the witness's failure to appear."

(k) R.C.M. 703(f)(4)(B) is amended to read as follows:

"(B) *Evidence not under the control of the Government.* Evidence not under the control of the Government may be obtained by subpoena issued in accordance with subsection (e)(2) of this rule. A subpoena duces tecum to produce books, papers, documents, data, or other objects or electronically stored information for a pretrial investigation pursuant to Article 32 may be issued, following the convening authority's order