

“(A) Upon receipt of a request for a deposition, the convening authority or military judge shall determine whether the requesting party has shown, by a preponderance of the evidence, that due to exceptional circumstances and in the interest of justice, the testimony of the prospective witness must be taken and preserved for use at a preliminary hearing under Article 32 or court-martial.”

(p) R.C.M. 702(d)(1) is amended to read as follows:

“(1) *Detail of deposition officer.* When a request for a deposition is approved, the convening authority shall detail a judge advocate certified under Article 27(b) to serve as deposition officer. When the appointment of a judge advocate as deposition officer is not practicable, the convening authority may detail an impartial commissioned officer or appropriate civil officer authorized to administer oaths, not the accuser, to serve as deposition officer. If the deposition officer is not a judge advocate, an impartial judge advocate certified under Article 27(b) shall be made available to provide legal advice to the deposition officer.”

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

“(B) *Contents.* A subpoena shall state the command by which the proceeding is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command the person to whom it is directed to produce books, papers, documents, data, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena issued for a preliminary hearing pursuant to Article 32 shall not command any person to attend or give testimony at an Article 32 preliminary hearing.”

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

“(C) *Who may issue.*

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

- (a) The summary court-martial;
- (b) At an Article 32 preliminary hearing, detailed counsel for the government;
- (c) After referral to a court-martial, detailed trial counsel;
- (d) The president of a court of inquiry; or
- (e) An officer detailed to take a deposition.”

(s) 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 a 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 preliminary hearing pursuant to Article 32 may be issued, following the convening authority’s order directing such preliminary hearing, by counsel for the government. A person in receipt of a *subpoena duces tecum* for an Article 32 hearing need not personally appear in order to comply with the subpoena.”

(t) R.C.M. 801(a)(6) is inserted after R.C.M. 801(a)(5) and reads as follows:

“(6) In the case of a victim of an offense under the UCMJ who is under 18 years of age and not a member of the armed forces, or who is incompetent, incapacitated, or deceased, designate in writing a family member, a representative of the estate of the victim, or another suitable individual to assume the victim’s rights under the UCMJ.

(A) For the purposes of this rule, the individual is designated for the sole purpose of assuming the legal rights of the victim as they pertain to the victim’s status as a victim of any offense(s) properly before the court.