

(A) *In general.* The presence of witnesses not on active duty and evidence not under control of the Government may be obtained by subpoena.

(B) *Contents.* A subpoena shall state the command by which the proceeding or investigation 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, or to produce evidence—including books, papers, documents, data, writings, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena shall not command any person to attend or give testimony at an Article 32 preliminary hearing.

(C) *Investigative subpoenas.*

(i) *In general.* In the case of a subpoena issued before referral for the production of evidence for use in an investigation, the subpoena shall command each person to whom it is directed to produce the evidence requested for inspection by the Government counsel who issued the subpoena or for inspection in accordance with an order issued by the military judge under R.C.M. 309(b).

(ii) *Subpoenas for personal or confidential information about a victim.*

After referral, a subpoena requiring the production of personal or confidential information about a victim named in a specification may be served on an individual or organization by those authorized to issue a subpoena under R.C.M. 703(g)(3)(E) or with the consent of the victim. Before issuing a subpoena under this provision and unless there are exceptional circumstances, the victim must be given notice so that the victim can move for relief under R.C.M. 703(g)(3)(I) or otherwise object.

(D) *Ex parte request by defense.* Upon request by the defense after referral, including an *ex parte* request, the military judge shall issue a subpoena to compel the production of witnesses if the witness's testimony is determined to be relevant and necessary.

(E) *Who may issue.* A subpoena may be issued by:

- (i) the military judge, after referral;
- (ii) the summary court-martial;
- (iii) the trial counsel of a general or special court-martial;
- (iv) the president of a court of inquiry;
- (v) an officer detailed to take a deposition; or
- (vi) in the case of a pre-referral investigative subpoena, a military judge

or, when issuance of the subpoena is authorized by a general court-martial convening authority, the detailed trial counsel or counsel for the Government.

(F) *Notice.* Notice shall be given to all parties for any subpoena issued for a witness post-referral unless, for good cause, the military judge issues a protective order.

(G) *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, in the case of a subpoena of an individual to provide testimony, 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.