

(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.

(H) *Place of service.*

(i) *In general.* A subpoena may be served at any place within the United States, its Territories, Commonwealths, or possessions.

(ii) *Foreign territory.* In foreign territory, the attendance of civilian witnesses and evidence not under the control of the Government may be obtained in accordance with existing agreements or, in the absence of agreements, with principles of international law.

(iii) *Occupied territory.* In occupied enemy territory, the appropriate commander may compel the attendance of civilian witnesses located within the occupied territory.

(I) *Relief.* If a person subpoenaed requests relief on grounds that compliance is unreasonable, oppressive, or prohibited by law, the military judge or, if before referral, a military judge detailed under Article 30a, shall review the request and shall—

- (i) order that the subpoena be modified or quashed, as appropriate; or
- (ii) order the person to comply with the subpoena.

(J) *Neglect or refusal to appear or produce evidence.*

(i) *Issuance of warrant of attachment.* If the person subpoenaed neglects or refuses to appear or produce evidence, the military judge or, if before referral, a military judge detailed under Article 30a or a general court-martial convening authority, may issue a warrant of attachment to compel the attendance of a witness or the production of evidence, as appropriate.

(ii) *Requirements.* A warrant of attachment may be issued only upon probable cause to believe that the witness or evidence custodian 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, if applicable, was provided to the witness or advanced to the