

(4) *Privilege.* If items covered by R.C.M. 308(c) are privileged, classified, or otherwise protected under Section V of Part III, the Military Rules of Evidence, no disclosure of those items is required under this rule. However, counsel for the Government may disclose privileged, classified, or otherwise protected information covered by R.C.M. 308(a) if authorized by the holder of the privilege or, in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(5) *Protective order if privileged information is disclosed.* If the Government agrees to disclose to the accused information to which the protections afforded by Section V of the Military Rules of Evidence may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)–(6) or 506(g)(2)–(5). (e) *Remedy.* The sole remedy for violation of this rule is a continuance or recess of sufficient length to permit the accused to adequately prepare a defense, and no relief shall be granted upon a failure to comply with this rule unless the accused demonstrates that the accused has been hindered in the preparation of a defense.”

(u) R.C.M. 309(a)(2) is amended to read as follows:

“(2) The matters that may be considered and ruled upon by a military judge under this rule are limited to those matters specified in R.C.M. 309(b).”

(v) R.C.M. 309(b)(3) is amended to read as follows:

“(3) *Requests for relief from subpoena or other process.* A person in receipt of a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C), a victim named in a specification

whose personal and confidential information has been subpoenaed under R.C.M.

703(g)(3)(C)(ii), a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A(a), or a person ordered to sit for a deposition under R.C.M. 702(b)(2) may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive, or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order, as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government.”

(w) R.C.M. 309(b)(6) is amended to read as follows:

“(6) *Pretrial confinement of an accused.* After action by the 7-day reviewing officer under R.C.M. 305(j)(2)(C), a military judge may, upon application of an accused for appropriate relief, review the propriety of pretrial confinement. A military judge may order release from pretrial confinement under the provisions of R.C.M. 305(k)(1).”

(x) A new R.C.M. 309(b)(10) is inserted immediately after (b)(9) to read as follows:

“(10) *Pre-referral depositions.* A military judge may, upon application by a party, consider whether to order a pre-referral deposition under R.C.M. 702(c)(2).”

(y) R.C.M. 309(e) is amended to read as follows:

“(e) *Record.* A separate record of any proceeding under this rule shall be prepared and forwarded to the convening authority, special trial counsel, or any combination thereof, with authority to dispose of the charges or offenses in the case. If charges are referred to trial in the case, such record shall be included in the record of trial.”

(z) R.C.M. 401(a) is revised to read as follows: