

(C) evidence counsel for the Government intends to present at the preliminary hearing; and

(D) any matters provided to the convening authority when deciding to direct the preliminary hearing.

(2) *Contraband*. If items covered by R.C.M. 405(d)(1) are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the preliminary hearing.

(3) *Privilege*. If items covered by R.C.M. 405(d)(1) 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. 405(d)(1) 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.

(4) *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 Part III 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) *Personnel*.

(1) Preliminary hearing officer.

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(B) Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(C) The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(D) The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity.

*(2) Counsel for the Government.*

(A) Subject to R.C.M. 405(e)(2)(B), a judge advocate, not the accuser, shall serve as counsel to represent the Government.

(B) For preliminary hearings requested by a special trial counsel, the special trial counsel shall detail counsel for the Government consistent with regulations prescribed by the Secretary concerned. Any determination by a special trial counsel to prefer or refer charges shall not act to disqualify that special trial counsel as an accuser.