

form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available, and if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final.

(iv) A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing.

(B) *Civilian Witnesses.*

(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness' testimony is relevant, not cumulative, and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for the witness's testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony.

(3) *Production of other evidence.*

(A) *Evidence under the control of the Government.*