
STATUTORY INSTRUMENTS

2009 No. 2041

The Armed Forces (Court Martial) Rules 2009

PART 11

ATTENDANCE OF WITNESSES

Notification of witnesses

62.—(1) Where any person is required to give evidence in any proceedings, the court administration officer shall notify him of the time and place at which he is required to attend.

(2) When the court administration officer gives notice of any proceedings to a party to the proceedings other than the Director, he shall offer to notify any person whom the party may require to give evidence.

(3) Where a witness summons is issued under rule 63 or 65, the court administration officer shall serve it on the person to whom it is directed.

(4) If, in the opinion of the court administration officer, it is not reasonably practicable to notify a person under this rule or to serve a witness summons on a person, he shall give notice of that fact to the judge advocate and the party who wishes the person to attend.

Issue of witness summons on application to a judge advocate

63.—(1) This rule applies where a judge advocate is satisfied that—

- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any proceedings before the Court Martial; and
- (b) it is in the interests of justice to issue a witness summons under this rule to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case, the judge advocate shall, subject to the following provisions of this rule, issue a witness summons directed to the person concerned and requiring him to—

- (a) attend before the court at the time and place stated in the witness summons; and
- (b) give the evidence or produce the document or thing.

(3) A witness summons may be issued under this rule only on an application; and the judge advocate may refuse to issue the witness summons if any requirement relating to the application is not fulfilled.

(4) An application for a witness summons must be made as soon as is practicable after the applicant becomes aware of the grounds for making it.

(5) The application must—

- (a) identify the proposed witness;
- (b) explain—
 - (i) what evidence the proposed witness can give or produce;

- (ii) why it is likely to be material evidence; and
- (iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless the judge advocate otherwise directs.

(7) An application in writing must contain a declaration that the facts stated in it are true to the best of the applicant's knowledge and belief.

(8) An application in writing must be served on the court administration officer and as directed by the judge advocate.

(9) A witness summons issued under this rule which requires a person to attend before the court and produce a document or thing may also require him to produce the document or thing—

- (a) at a place stated in the witness summons, and
- (b) at a time so stated, before the time at which the summons requires him to attend before the court,

for inspection by the applicant.

(10) A witness summons issued under this rule must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

Application for witness summons to produce a document, etc: judge advocate's assessment of relevance and confidentiality

64.—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the grounds that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights (including rights of confidentiality) of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

(2) A judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

- (a) the proposed witness or any representative of the proposed witness, or
- (b) a person to whom the document or thing relates or any representative of such a person,

to help the judge advocate assess the objection.

Issue of witness summons of judge advocate's own motion

65.—(1) For the purpose of any proceedings, a judge advocate may of his own motion issue a witness summons directed to a person and requiring him to—

- (a) attend before the court at the time and place stated in the witness summons; and
- (b) give evidence, or produce any document or thing specified in the witness summons.

(2) A witness summons issued under this rule must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

(3) A judge advocate may withdraw a witness summons issued under this rule if he no longer considers it necessary or if one of the following applies for it to be withdrawn—

- (a) the witness, on the grounds that—
 - (i) he cannot give or produce evidence likely to be material evidence; or

- (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or
- (b) any person to whom the proposed evidence relates, on the grounds that—
 - (i) that evidence is not likely to be material evidence; or
 - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

Application to withdraw a witness summons

66.—(1) A judge advocate may withdraw a witness summons if an application is made under this rule.

(2) An application under this rule may be made by the party who applied for the witness summons, on the ground that it is no longer needed.

(3) An application under this rule may also be made by the witness, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
 - (i) he cannot give or produce evidence likely to be material evidence; or
 - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons.

(4) An application under this rule may also be made by any person to whom the proposed evidence relates, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
 - (i) that evidence is not likely to be material evidence; or
 - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

(5) An application under this rule—

- (a) must be made in writing to the court administration officer;
- (b) must be made as soon as is practicable after the applicant becomes aware of the grounds for making it; and
- (c) must state the grounds on which it is made.

(6) An application under this rule must be served on—

- (a) the witness (where he is not the applicant);
- (b) the party who applied for the witness summons (where he is not the applicant); and
- (c) any other person who, to the applicant's knowledge, has been served with the application for the witness summons.

(7) Where—

- (a) a witness summons requires the proposed witness to produce in evidence a document or other thing, and
- (b) a person other than the party who applied for the witness summons makes an application under this rule,

rule 64(2) and (3) apply, with references to “the objection” read as references to the matters mentioned in paragraph (3)(b) or (4)(b) (as the case may be).

Oral applications

67.—(1) Where a rule or direction requires an application under this Part to be in writing, the application may be made orally with the leave of the judge advocate.

(2) A party who seeks leave to make such an application orally must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so, explain the reasons for—
 - (i) the application; and
 - (ii) seeking leave to make the application orally.

Further process to secure attendance of witness

68.—(1) If the judge advocate is satisfied by evidence on oath that—

- (a) a person is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
- (b) that it is in the interests of justice that the person should attend to give evidence or to produce the document or thing, and
- (c) it is probable that a witness summons issued under rule 63 or 65 would not procure his attendance,

the judge advocate may, instead of issuing a witness summons, issue a warrant to arrest that person and bring him before the court.

(2) Where—

- (a) any person has failed to attend before the court in answer to a witness summons issued under rule 63 or 65,
- (b) the judge advocate is satisfied by evidence on oath that—
 - (i) the person is likely to be able to give evidence likely to be material evidence or produce any document or other thing likely to be material evidence in the proceedings, and
 - (ii) the person has been duly served with the witness summons and that a reasonable sum has been paid or tendered to him for costs and expenses, and
- (c) it appears to the judge advocate that there is no just excuse for the person’s failure to attend,

the judge advocate may issue a warrant to arrest the person and bring him before the court.

(3) Subject to paragraph (4), a warrant issued under this rule shall be addressed to—

- (a) one or more service policemen; or
- (b) one or more officers of a civilian police force.

(4) A warrant issued under this rule may not be addressed to a service policeman unless it appears to the judge advocate that the person for whose arrest it is issued is subject to service law or is a civilian subject to service discipline.

(5) Where a person has been arrested by an officer of a civilian police force under a warrant issued under this rule, he must be transferred to service custody as soon as is practicable.

(6) Where a person has been arrested under a warrant issued under this rule and is in service custody—

- (a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and
- (b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

Review of custody of witness

69.—(1) Paragraphs (2) to (5) apply where—

- (a) a person is brought before a judge advocate under rule 68(6); or
- (b) the keeping of a person in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.

(2) The judge advocate may by order authorise the keeping (or further keeping) of the person in service custody if he is satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.

(3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the person in service custody is such period, ending not later than 8 days after the day on which the order is made, as he considers appropriate in all the circumstances.

(4) If the judge advocate makes no order under paragraph (2), the person must be released from service custody without delay; but this is subject to paragraph (5).

(5) The judge advocate may require the person to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the person in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) Any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate on application by the person or the Director.

(8) Section 107(5) shall apply in relation to a requirement imposed by virtue of paragraph (5) as it applies in relation to a requirement imposed by virtue of section 107(3)(a).

(9) A person guilty of an offence under section 107(5) by virtue of paragraph (8) shall be liable to a fine not exceeding level 4 on the standard scale.

Entitlement to witness expenses

70.—(1) Where any person is—

- (a) notified under rule 62 of the requirement to give evidence in any proceedings, or
- (b) served with a witness summons issued under rule 63 or 65,

there shall be paid or tendered to him at that time any expenses in respect of his attendance.

(2) For the purpose of this rule—

- (a) the tender of a warrant or voucher entitling a person to travel free of charge shall constitute tender of his expenses in respect of any travelling required; and
- (b) the tender of a written undertaking by the court administration officer to defray any other expenses payable under these Rules shall constitute tender in respect of those expenses.

Order for inspection of banker's books

71. The powers conferred by section 7 of the Bankers' Books Evidence Act 1879(1) (orders for the inspection of bankers' books) may be exercised by a judge advocate, in relation to any proceedings of the court, on the application of any party to the proceedings.