

SCHEDULE 1

Rule 19

WITNESSES AND SUMMONSES

Notification of witnesses

1.—(1) Where any person is required to give evidence in proceedings under these Rules, 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 under these Rules to a party to the proceedings, he shall offer to notify any person whom the party may require to give evidence.

(3) Where a witness summons is issued under paragraph 2 or 3 of this schedule, 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 paragraph 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

2. This paragraph 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 hearing under these Rules; and
- (b) it is in the interests of justice to issue a witness summons under this paragraph 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 paragraph, issue a witness summons directed to the person concerned and require him to—

- (a) attend before the judge advocate 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 only be issued under this paragraph 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) A party who wants a judge advocate to issue a witness summons must apply as soon as practicable after becoming aware of the grounds for doing so.

(5) The party applying 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 a judge advocate.

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(9) A witness summons issued under this paragraph which requires a person to attend before a judge advocate 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 a judge advocate,

for inspection by the applicant.

(10) A witness summons issued under this paragraph 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

3.—(1) This paragraph 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) The 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

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

- (a) attend before the judge advocate 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 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

5.—(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 paragraph 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,

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

Oral applications

6.—(1) Where a paragraph or direction requires an application under this Schedule 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

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- (b) in doing so, explain the reasons for—
 - (i) the application; and
 - (ii) seeking leave to make the application orally.