

the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under paragraph (a)(5) of this section or the non-release of information permitted under paragraph (a)(4) of this section. Attention should be given to the Secretary of the Navy instructions implementing the Freedom of Information Act (5720.42 series) and the Privacy Act (5211.5C series). Consultation with the command judge advocate, if one is assigned, or with the cognizant Naval Legal Service Office concerning interpretation and application of these instructions is encouraged.

(b) *Spectators.* (1) The sessions of courts-martial shall be open to the public, which includes members of both the military and civilian communities. In order to maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, exclude specific persons from the courtroom, and close a session. Video and audio recording and taking of photographs, except for the purpose of preparing the record of trial, in the courtroom during the proceedings and radio or television broadcasting of proceedings from the courtroom shall not be permitted. The military judge may, as a matter of discretion, permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed from the courtroom or by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

(2) *At pretrial investigations.* Consistent with Rules for Courts-Martial 405(h)(3), Manual for Courts-Martial, the Convening Authority or investigating officer may direct that all or

part of an Article 32 investigation under 10 U.S.C. 832 be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators may be based on the need to protect classified information, to prevent disclosure of matters that will be inadmissible in evidence at a subsequent trial by Courts-Martial and are of such a nature as to interfere with a fair trial by an impartial tribunal, or consistent with appellate case law, for a reason deemed appropriate by the commander ordering the investigation or the investigating officer. The reasons for closing an Article 32 investigation, and any objections thereto, shall be memorialized and included as an attachment to the report of investigation. Ordinarily, the proceedings of a pretrial investigation should be open to spectators. In cases dealing with classified information, the investigating officer will ensure that any part of a pretrial investigation (e.g., rights advisement) that does not involve classified information will remain open to spectators.

[38 FR 5997, Mar. 6, 1973, as amended at 47 FR 49644, Nov. 2, 1982; 50 FR 23800, June 6, 1985; 69 FR 20540, Apr. 16, 2004]

Subpart D [Reserved]

Subpart E—Miscellaneous Matters

§ 719.138 Fees of civilian witnesses.

(a) *Method of Payment.* The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed public voucher for such fees and mileage, signed by the witness and certified by one of the following:

- (1) Trial counsel or assistant trial counsel of the court-martial;
- (2) Summary court officer;
- (3) Counsel for the court in a court of inquiry;
- (4) Recorder or junior member of a board to redress injuries to property, or

(5) Military or civil officer before whom a deposition is taken.

The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 6), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

(b) *Obtaining money for advance tender or payment.* Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) *Reimbursement.* If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together

with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) *Certificate of person before whom deposition is taken.* The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned.

(e) *Payment of accrued fees.* The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) *Computation.* Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) *Nontransferability of accounts.* Accounts of civilian witnesses may not be transferred or assigned.

(h) *Signatures.* Signatures of witnesses signed by mark must be witnessed by two persons.

(i) *Rates for civilian witnesses prescribed by law—(1) Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a Naval tribunal at a specified place or to appear at a place where his deposition is to be taken for use before a court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. 1821. Witness and subsistence fees are not prorated. Instead any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this paragraph shall be construed as authorizing the payment of attendance fees to witnesses for:

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(i) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(ii) For travel which is performed prior to being duly summoned as a witness; or

(iii) For travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this paragraph.

(2) *Civilian witnesses in Government employ.* When summoned as a witness, a civilian in the employ of the Government shall be paid as authorized by Joint Travel Regulations.

(j) *Supplemental construction of section.* Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested or whose testimony is determined not to meet the standards of relevancy and materiality set forth in accordance with MCM, 1984, R.C.M. 703.

(k) *Expert witnesses.* (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the nearest officer exercising general court-martial jurisdiction having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Naval Base, Pearl Harbor. See paragraph (l) of this section for fees payable to foreign nationals.

(2) The provisions of paragraph (i) of this section are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with MCM, 1984,

R.C.M. 703(d), may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

(l) Payment of witness fees to foreign nationals: Officers exercising general court-martial jurisdiction in areas other than a State of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

[38 FR 5997, Mar 6, 1973, as amended at 47 FR 49644, Nov. 2, 1982; 50 FR 23801, June 6, 1985]

§§ 719.139-719.141 [Reserved]

§ 719.142 Suspension of counsel.

(a) *Report of Allegations of Misconduct or Disability.* When information comes to the attention of a member of a court-martial, a military judge, trial or defense counsel, staff judge advocate, member of the Navy-Marine Corps Court of Military Review or other directly interested or concerned party that a judge advocate or civilian who is acting or is about to act as counsel before a proceeding conducted under the UCMJ or MCM is or has been unable to discharge properly all the duties of his or her position by reason of mental or physical disability or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a judge advocate or attorney, such information should be reported to the commanding officer of that judge advocate or, in the case of civilian counsel, to the officer exercising general court-martial jurisdiction over the command