

**§ 720.23**

issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the person's absence would have an adverse impact on naval operations. In such a case, a full report of the circumstances will be made to the Judge Advocate General or, in the case of civilian employees, to the Associate General Counsel (Litigation). In those cases where fees and mileage are not tendered as required by rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer also may issue permissive orders at no cost to the Government. Such persons, however, should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* When members or civilian employees are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of § 720.20 apply.

**§ 720.23 Naval prisoners as witnesses or parties in civilian courts.**

(a) *Criminal actions.* When Federal or State authorities desire the attendance of a naval prisoner as a witness in a criminal case, they should submit a written request for such person's attendance to the Judge Advocate General. The civilian authority should include the following averments in its request:

(1) That the evidence to be derived from the prisoner's testimony is unavailable from any other source:

(2) That the civilian authority will provide adequate security arrangements for the prisoner and assume responsibility for the prisoner while he is in its custody; and

(3) that the civilian authority will assume all costs of transporting the prisoner from the brig, of maintaining that prisoner while in civilian custody, and of returning the prisoner to the brig from which he was removed.

The civilian authority should also include in its request an estimate of the length of time the prisoner's services

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will be required, and should specify the mode of transport by which it intends to return the prisoner. Upon receipt of such a request, authority by the Judge Advocate General will be given, in a proper case, for the production of the requested naval prisoner in court without resort to a writ of habeas corpus ad testificandum (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

(b) *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a Federal or State court, either as a party or as a witness, in private litigation pending before such a court. The deposition of a naval prisoner may be taken in such a case, subject to reasonable conditions or limitations imposed by the command concerned.

**§ 720.24 Interviews and depositions in connection with civil litigation in matters pertaining to official duties.**

Requests to interview, depose, or call as witnesses, current or former members or civilian employees of the Department of the Navy, regarding information obtained in the course of their official duties, including expert testimony related thereto, shall be processed in accordance with 32 CFR part 725.

**§ 720.25 Repossession of personal property.**

Repossession of personal property, located on a Navy or Marine Corps installation, belonging to a member or to any dependent residing at or located on a Department of the Navy installation, may be permitted in the discretion of the commanding officer of the installation where the property is located, subject to the following. The documents purporting to authorize repossession and the procedures for repossessing the property must comply with State law. Prior to permitting physical repossession of any property, the commanding officer shall cause an informal inquiry into the circumstances and then determine whether to allow the repossession. If repossession is to be allowed, the person whose property is to be repossessed should be asked if he wishes

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to relinquish the property voluntarily. Repossession must be carried out in a manner prescribed by the commanding officer. In the case of property owned by civilian employees of the Department of the Navy or civilian contractors or their employees or dependents, the commanding officer should direct that the disputed property be removed from the installation until the commanding officer is satisfied that the dispute is resolved.

§§ 720.26–720.29 [Reserved]

### Subpart C—Production of Official Records

#### § 720.30 Production of official records in response to court order.

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, DC, or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. See the provisions in the Secretary of the Navy Instruction 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a system of records as defined in the Secretary of the Navy Instruction 5211.5 series. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order when such records are not in a 'system of records' as defined by the Privacy Act (5 U.S.C. 552a) except as noted in paragraphs (b) and (c) of this

section. In determining whether or not a record contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of the Secretary of the Navy Instruction 5720.42 series. If the record is in a "system of records," it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written consent to the production or if the production is otherwise authorized under the Privacy Act and the Secretary of the Navy Instruction 5211.5 series. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified. Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with the Chief of Naval Operations Instruction 5510.1 series.

(b) *Records in the custody of National Personnel Records Center.* Court orders, *subpoenas duces tecum*, and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers or officials within the Department of the Navy; and