

Executive Summary of 2014 Amendments to the Manual for Courts-Martial

Generally. The 2014 Amendments to the Manual for Courts-Martial implement six changes to military justice practice. First, amendments to Rules for Courts-Martial 405 and 703 implement a provision of the National Defense Authorization Act for Fiscal Year 2012 by prescribing rules for issuing subpoenas duces tecum to obtain evidence for pretrial investigations. Second, the amendment to Rule for Courts-Martial 405(i) requires investigating officers at pretrial investigation hearings to use the same procedures to protect sexual assault victim witnesses from improper questioning as military judges use at courts-martial. Third, amendments to Rules for Courts-Martial 1103 and 1104 implement a provision of the National Defense Authorization Act for Fiscal Year 2012 requiring that in sex offense cases, a copy of the record of trial be given to any victim who testified at trial. Fourth, amendments to Rules for Courts-Martial 1105, 1106, 1107, and 1306 implement a provision in the National Defense Authorization Act for Fiscal Year 2014 by establishing procedures for victims to submit matters to the convening authority before he or she acts on the court-martial's findings and sentence. Fifth, amendments to Rule for Courts-Martial 1107 and its analysis implement a provision in the National Defense Authorization Act for Fiscal Year 2014 by prohibiting the convening authority, when acting on a case, from considering any matter relating to a victim's character that was not admitted into evidence at trial. Sixth, the amendment to Rule for Courts-Martial 306's discussion implements a provision in the National Defense Authorization Act for Fiscal Year 2014 by deleting references to the accused's character and military service as factors a commander should consider when disposing of charges.

Specific Rule Amendments.

R.C.M. 405(f) and (g) are amended to authorize Article 32 investigating officers and the government counsel at an Article 32 hearing to issue subpoenas duces tecum.

R.C.M. 405(i) is amended to provide that when applying Military Rule of Evidence 412 at an Article 32 hearing, the investigating officer shall use the same procedures to determine the permissibility of questioning the victim or the admissibility of evidence that a military judge would use at a court-martial.

R.C.M. 703 is amended to authorize either the Article 32 investigating officer or the government counsel at an Article 32 hearing to issue subpoenas duces tecum.

R.C.M. 703(e) is amended to expressly authorize the issuance of a subpoena for electronically stored information and to provide that, except in cases where hardship would result, a subpoenaed witness will be given means to seek reimbursement for fees and mileage rather than being tendered fees upon service of the subpoena.

R.C.M. 1103 is amended to provide for the service of a copy of the record of trial on the victim in a sex offense case. The rule is broader than that required by Article 54(e), Uniform Code of Military Justice, 10 U.S.C. § 854(e). The rule provides for a free record of trial to any victim named in a specification alleging a qualifying offense, regardless of whether the victim testifies. The rule also broadly applies to offenses under Articles 120, 120b, 120c, and 125, as well as attempts to commit those offenses. Article 54(e) requires giving a free copy of the record of trial only to victims of Article 120 offenses who testify.

R.C.M. 1104 is amended to provide procedures for the record of trial's service on qualifying victims.

R.C.M. 1105A is new. It provides victims with the right to submit a written statement to the convening authority before he or she acts on the findings and sentence.

R.C.M. 1106 is amended to require the staff judge advocate to provide a written recommendation to the convening authority in any special or general court-martial case in which a victim submits a statement pursuant to R.C.M. 1105A, to require the staff judge advocate to forward the victim's statement to the convening authority, and to allow the accused to submit a response to the victim's statement.

R.C.M. 1107 is amended to require the convening authority to consider any statement submitted by a victim pursuant to R.C.M. 1105A before acting on the findings and sentence.

R.C.M. 1107(b) is amended to prohibit the convening authority from considering any matters that relate to the victim's character that were not admitted into evidence at trial.

R.C.M. 1306 is amended to permit a crime victim to submit a statement to a summary court-martial's convening authority before he or she acts on the findings and sentence.

The Discussion accompanying R.C.M. 306 is amended to delete references to the accused's character and military service as factors a commander should consider when disposing of charges.

The Discussion accompanying R.C.M. 405 is amended to reflect the authority to issue subpoenas duces tecum to obtain evidence during an Article 32 investigation.

The Discussion accompanying R.C.M. 405(i) is amended to provide that evidence of a victim's prior sexual acts must be protected in accordance with the Privacy Act and that evidence taken during a closed hearing should not be included in the report of investigation.

The Discussion accompanying R.C.M. 703 is amended to reflect the authority to issue subpoenas duces tecum to obtain evidence during an Article 32 investigation and to state that a general court-martial convening authority with jurisdiction over the case may issue a warrant of attachment to compel production of documents that were subpoenaed for an Article 32 investigation.

Discussion accompanying R.C.M.s 1103 and 1104 is added to note that the obligation to serve a copy of the record on qualifying victims was created by the National Defense Authorization Act for Fiscal Year 2012 and to refer to service regulations for the distribution of promulgating orders. The discussion also notes that the rule does not limit the Services' discretion to provide records of trial to individuals not covered within its scope.

Discussion accompanying R.C.M. 1105A is added to indicate to whom a victim's statement should be submitted.

The Discussion accompanying R.C.M. 1106 is amended to indicate which statements by a victim must be included in the staff judge advocate's recommendation to the convening authority and to indicate when a victim's statement will be considered "new matter" that authorizes the accused to respond to the staff judge advocate's recommendation.

The Analysis for R.C.M. 1107 is amended to indicate that the Rule's prohibition against convening authorities' consideration of information about a victim's character that was not admitted into evidence is broader than required by the National Defense Authorization Act for Fiscal Year 2014, thereby providing greater protection to victims.