
STATUTORY INSTRUMENTS

2009 No. 2041

The Armed Forces (Court Martial) Rules 2009

PART 8

PRELIMINARY PROCEEDINGS

Listing of initial preliminary proceedings

45. On receipt of the advance information in relation to a charge, the court administration officer must—

- (a) forward it to the Judge Advocate General and request him to specify a judge advocate for preliminary proceedings in relation to the charge; and
- (b) appoint a time and place for the commencement of the preliminary proceedings.

Listing of further preliminary proceedings

46.—(1) The court administration officer must appoint a time and place for further preliminary proceedings if so directed by—

- (a) the judge advocate for any preliminary proceedings; or
- (b) the Judge Advocate General.

(2) The judge advocate for any preliminary proceedings may give a direction under this rule—

- (a) on the oral application of the Director or a defendant; or
- (b) of his own motion.

(3) The Judge Advocate General may give a direction under this rule on the written application of the Director or a defendant.

(4) A written application for a direction under this rule—

- (a) must be made to the court administration officer;
- (b) must specify the reason for which further preliminary proceedings are required;
- (c) must include an estimate of the likely length of the further preliminary proceedings; and
- (d) subject to rule 47 (preliminary proceedings in chambers without notice), must be served on every other party to the proposed trial proceedings.

Preliminary proceedings in chambers without notice to defendant

47. On application by the Director, the judge advocate for any preliminary proceedings may direct that the proceedings are, or that any part of the proceedings is—

- (a) where there is one defendant, to be held in his absence and without notice to him;
- (b) where there are two or more defendants, to be held in the absence of both or all of them and without notice to any of them.

Outline of prosecution case

48. A judge advocate may direct the Director to serve on each defendant and the court administration officer, before any preliminary proceedings, an outline of the prosecution case.

Powers of judge advocate

49.—(1) In preliminary proceedings the judge advocate may give such directions as appear to him to be necessary to secure the proper and efficient management of the case.

(2) Without prejudice to paragraph (1), the judge advocate may make an order or ruling on—

- (a) any question as to the admissibility of evidence;
- (b) any question as to the joinder or severance of charges; or
- (c) any other question of law, practice or procedure relating to the case.

(3) Any direction given in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged by—

- (a) the judge advocate who gave it; or
- (b) the judge advocate for any related proceedings.

(4) Any order or ruling made in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged—

- (a) by the judge advocate who made it;
- (b) by the judge advocate for any related proceedings; or
- (c) on appeal.

(5) Section 166 (fitness to stand trial) applies in preliminary proceedings as it applies on a trial by the court.

Appeals

50.—(1) The Appeal Court shall have jurisdiction to hear an appeal against any order or ruling made in preliminary proceedings.

(2) An appeal under this rule may be brought only with leave of the Appeal Court.

(3) A judge advocate may continue preliminary proceedings notwithstanding that leave to appeal has been granted under paragraph (2), but related proceedings (other than further preliminary proceedings) may not commence until the appeal has been determined or abandoned.