

---

STATUTORY INSTRUMENTS

---

**2000 No. 2371**

**The Summary Appeal Court (Army) Rules 2000**

**PART VI**

**MATTERS PRELIMINARY TO THE HEARING OF AN APPEAL**

**Power of the summary appeal court to hear more than one appeal at the same time**

**32.**—(1) The court may decide to hear two or more appeals at the same time where it appears to be in the interests of justice to do so.

(2) The court may make a determination under paragraph (1) of its own motion or on the application of the prosecuting authority or of a person who is the appellant in one or more of the appeals to which the application relates.

(3) The power of the court to make a determination under paragraph (1) shall be exercised by a judge advocate sitting alone.

(4) Before refusing an application under paragraph (2) or making a determination under paragraph (1), the judge advocate shall afford the prosecuting authority and any person who is the appellant in any of the appeals to which the application or determination relates the opportunity of making representations to him.

(5) Where a judge advocate makes a determination under paragraph (1), he shall direct the court administration officer to specify the same time and place for the hearing of each of the appeals to which the determination relates.

**Preliminary hearings**

**33.**—(1) The court may direct the court administration officer to convene a hearing prior to the commencement of the hearing of the appeal—

- (a) of its own motion; or
- (b) on the application of the respondent or the appellant,

and such a hearing shall be referred to in these Rules as a preliminary hearing.

(2) The power to direct a preliminary hearing under paragraph (1) may be exercised notwithstanding that a preliminary hearing has already been held by virtue of that paragraph.

(3) An application under paragraph (1)(b) shall be made in writing in the form set out in Schedule 2 and shall be served on the court administration officer.

(4) The applicant shall serve a copy of the notice given under paragraph (3) on the other party to the proceedings.

(5) Before directing the court administration officer to convene a preliminary hearing the court shall afford the appellant and the respondent the opportunity of making written representations to it.

(6) Paragraph (5) shall not oblige the court to afford any party the opportunity of making representations where it appears to it that it would be impracticable to do so, or would cause unnecessary delay.

- (7) The functions of the court under this rule and rule 34 shall be exercised by a judge advocate.
- (8) On receipt of a direction under paragraph (1), the court administration officer shall—
  - (a) specify the time and place for the preliminary hearing to take place;
  - (b) serve notice in writing of those matters on the parties to the appeal;
  - (c) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.
- (9) Paragraphs (4) to (6) and (8) are subject to rule 34.

#### **Preliminary hearing without notice to the appellant**

**34.**—(1) This rule applies where the respondent applies for a preliminary hearing to be held in accordance with rule 33, but considers that it is in the public interest for the hearing to be held without the participation of the appellant.

(2) The respondent shall include with the notice under rule 33(3) a statement that he considers that it is in the public interest for a preliminary hearing to be held without the participation of the appellant and the reasons why he considers that to be the case.

(3) Rule 33(4) (requirement to serve a copy of the notice of application for a preliminary hearing on the other party) shall not apply.

(4) The court shall determine whether in the interests of justice a preliminary hearing should take place without the participation of the appellant; and where it so determines—

- (a) paragraphs (5) and (6) of rule 33 shall not apply in relation to the application for a preliminary hearing by the respondent; and
- (b) paragraph (8)(b) of that rule shall have effect as if it required the court administration officer only to serve notice of the time and place of the preliminary hearing on the respondent.

#### **Matters capable of being dealt with at a preliminary hearing**

**35.**—(1) Any matter relating to or affecting the hearing of the appeal may be considered at a preliminary hearing including—

- (a) any question as to the admissibility of evidence;
- (b) any question as to the jurisdiction of the court in relation to any issue raised on the appeal;
- (c) any question as to whether the whole or any part of the hearing of the appeal should not be held in open court;
- (d) any question as to the exercise by the court of its powers under rule 32;
- (e) any matter relating to the evidence to be given at the hearing of the appeal, including any matter relating to the persons who are or may be required to give evidence as witnesses at the hearing;
- (f) any question relating to the summoning of witnesses (including whether a witness summons should be held to be of no effect);
- (g) any other question of law, or of the practice or procedure of the court, relevant to the proceedings on the appeal.

(2) A preliminary hearing shall be a hearing before a judge advocate sitting alone, and he may give such orders, rulings or directions relating to any matter raised at the hearing as he thinks fit.

(3) Any ruling or order made at a preliminary hearing shall have effect until the conclusion of the proceedings on the appeal unless it appears to a judge advocate on application at any stage during

the proceedings (including at a subsequent preliminary hearing) that the order or ruling should be varied or discharged.

### **Preliminary hearings in chambers**

**36.**—(1) A preliminary hearing shall take place before a judge advocate in chambers.

(2) Except with the leave of the judge advocate, and subject to paragraph (3) and rule 34, the only persons entitled to be present at a preliminary hearing are the court administration officer, the respondent, the appellant, any legal representative of the appellant, the clerk of the court, the court recorder and any interpreter.

(3) Where any question as to the exercise by the court of its powers under rule 32 falls to be considered at a preliminary hearing, any person who is an appellant in any of the appeals which may be affected and any legal representative of his shall be entitled to be present at the hearing.

### **Presence at preliminary hearing by live TV link**

**37.**—(1) Subject to paragraph (3), a person mentioned in paragraph (2) shall be treated as being present at a preliminary hearing (and shall be entitled to be heard as if so present) if, whether by means of a live television link or similar arrangements (“live link”), he is able to see and hear and to be seen and heard by—

- (a) the judge advocate before whom the hearing is taking place;
- (b) any witness giving evidence at the hearing; and
- (c) the other persons who are entitled to be present at the hearing in accordance with rule 36.

(2) The persons are the respondent, the appellant, any legal representative of the appellant, any interpreter and any person entitled to be present at the hearing by virtue of rule 36(3).

(3) Paragraph (1) shall only have effect in relation to the presence of any person at a preliminary hearing if prior to the hearing—

- (a) the appellant,
- (b) the respondent, and
- (c) any person entitled to be present at the hearing by virtue of rule 36(3) (other than in the capacity of legal representative),

have given notice in writing to the court administration officer that they consent to the person’s presence at the hearing by live link.