

DEFENCE RULES OF PROCEDURE (PART I)

S.I. 53/1984

(SECTION 133)

[Commencement 20th September, 1984]

1. These Rules may be cited as the Defence Rules of Procedure (Part I). Citation.

2. In these Rules, unless the context otherwise requires — Interpretation.

“accused” means a person subject to service law who is alleged to have committed an offence against Part V of the Act;

“arrest” includes open arrest;

“attorney” means a counsel and attorney for the time being authorised to practice as a counsel and attorney of the Supreme Court;

“child” means a person under the age of fourteen years;

“commanding officer” includes authorised officer as defined in Punishment Regulations where he is acting within his delegated powers;

“Punishment Regulations” means the Defence (Summary Jurisdiction and Punishment) Regulations; and

“young person” means a person who has attained the age of fourteen years and is under the age of seventeen years.

Avoidance of Delay

3. (1) Before an allegation against an accused that he has committed an offence against Part V of the Act is further proceeded with the allegation shall be reported in the manner set out in Part I of the First Schedule to these Rules. Avoidance of delay in investigating charges. First Schedule.

(2) The commanding officer shall as soon as possible charge the accused in the manner prescribed in rule 5, and investigate the charge in the manner prescribed in rule 6.

4. Where an accused is in arrest in relation to an offence — Special provisions where accused held in arrest.

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- (a) he shall not be held in arrest for more than twelve hours unless the allegation has within that period been reported to the commanding officer as required by rule 3(1);
 - (b) the commanding officer shall, within twenty-four hours of receiving the charge report, inform the accused of the allegation against him and either release him from arrest, without prejudice to re-arrest, or remand him in custody pending investigation and trial;
 - (c) the commanding officer, may at any time before a court-martial has assembled to try the charge against the accused, release him from arrest without prejudice to re-arrest;
 - (d) unless it is impracticable, because enquiries into the allegation have not been completed or for other good causes, the commanding officer shall within forty eight hours of the arrest charge the accused and begin to investigate the charge;
 - (e) a delay report in the form set out in the Second Schedule to these Rules shall be signed by the commanding officer and sent to Commander Defence Force —
 - (i) in cases where an accused is detained in arrest for more than forty-eight hours without being charged or without the investigation having begun, on the expiry of forty-eight hours; and
 - (ii) in cases where an accused is detained in arrest for more than eight days without being tried summarily for the offence or without a court-martial assembling to try the accused —
 - (aa) on the expiry of eight days; and
 - (bb) every further eight days until the accused is released from arrest or tried summarily or the court-martial assembles;
 - (f) an accused shall not be detained in arrest for more than ninety consecutive days without a court-martial being convened for his trial unless Commander Defence Force directs in writing, in

Second Schedule.

the form set out in the Second Schedule, that the accused shall not be released from arrest and the reasons for the direction; and

- (g) failure to comply with any of the provisions of this rule shall not of itself invalidate any subsequent proceedings against the accused.

Investigation of Charges

5. When the commanding officer decides that the allegation shall be proceeded with he shall formally charge the accused by —

- (a) drawing up a charge consisting of the full statement and particulars of the offence in Part III of the record of investigation set out in the First Schedule; and
- (b) reading and, if necessary, explaining the charge to the accused.

6. (1) Subject to paragraph (3), when a commanding officer investigates a charge he shall —

- (a) hear the evidence himself in accordance with rule 7; or
- (b) cause the evidence to be reduced to writing in accordance with paragraph (2) or this rule, and read and consider it:

Provided that —

- (i) although he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;
- (ii) after evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7; and
- (iii) before he remands an accused for trial by court-martial he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 9 or an abstract of evidence made in accordance with rule 10:

Provided that a summary of evidence must be taken if —

- (a) the maximum punishment for the offence with which the accused is charged is death; or

- (b) the accused, at any time before the charge against him is referred to Commander Defence Force in accordance with rule 13, requires in writing that a summary evidence be taken.

(3) Where after investigation in accordance with paragraph (1) of this rule the evidence discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or substitution for, the original charge, and the investigation of the original charge may be treated, for the purpose of these rules, as the investigation of the added or substituted charge and the commanding officer shall read and, if necessary, explain the new charge to the accused.

Hearing of evidence by commanding officer.

7. (1) When a commanding officer investigates a charge by hearing the evidence himself —

- (a) the accused shall be arraigned and if there is more than one charge against the accused he shall be required to plead separately to each charge; and
- (b) the commanding officer shall proceed to deal with the case in accordance with paragraph (2) or (3), depending on the plea:

Provided that a commanding officer shall not deal with the case without first obtaining the permission of the Commander Defence Force if a charge is laid under any of the sections of the Act mentioned in regulation 4 of the Defence (Summary Jurisdiction and Punishment) Regulations.

- (2) Where the accused pleads guilty to the charge —
 - (a) the facts of the case shall be summarised in the presence of the accused by, or on behalf of, the person bringing the charge;
 - (b) the accused may adduce evidence of character and in mitigation of punishment and address the commanding officer in mitigation of punishment; and
 - (c) the commanding officer may award one or more of the punishments prescribed by the Defence (Summary Jurisdiction and Punishment) Regulations:

Provided that the commanding officer shall not in the cases prescribed by rule 8 award a punishment without giving the accused an opportunity of electing trial by court-martial and if the accused so elects the commanding officer shall record a finding but shall take steps under rule 13 to have the charge tried by court-martial:

Provided further that the commanding officer shall not award a punishment to an officer without first obtaining in the manner set out in part V of the First Schedule the approval required by sections 86(1) and 86(2) of the Defence Act.

(3) Where the accused pleads not guilty to the charge —

(a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness:

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

- (b) the accused shall be allowed to cross-examine any prosecution witness;
- (c) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;
- (d) the accused may call witnesses in his defence who shall give their evidence orally and in his presence;
- (e) the evidence shall be given an oath;
- (f) the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness, and to any interpreter, in the form laid down in the Third Schedule;
- (g) the commanding officer shall then determine whether the accused is not guilty of the charge in which case he will dismiss the charge, or guilty of the charge; and

Third Schedule.

- (h) if the commanding officer does not dismiss the charge —
- (i) the accused may adduce evidence of character and in mitigation of punishment and address the commanding officer in mitigation of punishment;
 - (ii) the commanding officer may award one or more of the punishments prescribed by the Defence (Summary Jurisdiction and Punishment) Regulations:

Provided that the commanding officer shall not in the cases prescribed in rule 8, award a punishment without giving the accused an opportunity of electing trial by court-martial and, if the accused so elects, the commanding officer shall not record a finding but shall take steps under rule 13 to have the charge tried by court-martial:

Provided further that the commanding officer shall not award a punishment to an officer without first obtaining in the manner set out in part V of the First Schedule the opportunity required by sections 86(1) and 86(2) of the Defence Act.

First Schedule.

(4) The accused's representative may, with the accused's consent and on his behalf, address the commanding officer and examine or cross-examine any witness.

Option to elect trial by court-martial.

8. (1) The commanding officer shall afford the accused an opportunity of electing to be tried by court-martial where the accused is an officer and either the commanding officer intends to award a fine or stoppages, or a finding of guilty will involve a forfeiture of pay.

(2) The accused shall be given a period of twenty-four hours in which to decide whether he wishes to be tried by court-martial.

Summary of evidence.

Fourth Schedule.

9. A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in the Fourth Schedule —

- (a) it shall be taken in the presence of the accused by the commanding officer, by another officer on the direction of the commanding officer or by an attorney;

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- (b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if the person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the services or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the person taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

- (c) after all the evidence against the accused has been given, the accused shall be asked —

“Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence.”

Any evidence given or statement made by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him and corrected where necessary, and he shall sign it unless he declines to do so;

- (d) the accused may call witnesses in his defence, who shall give their evidence orally;
- (e) neither the accused nor the witnesses for the defence shall be subject to cross-examination;
- (f) the evidence of each witness (other than the accused) who gives evidence orally, shall be recorded in writing and, before the summary of evidence is concluded, the record of his evidence shall be read over to him, corrected where necessary and signed by him;
- (g) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;

Third Schedule.

- (h) the oath shall be administered in accordance with the form set out in the Third Schedule by the person taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that, where any child of tender years, called as a witness, does not, in the opinion of the person taking the summary, understand the nature of an oath, his evidence may be received though not given upon oath, if, in the opinion of the person taking the summary, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

- (i) at the conclusion of the taking of the summary of evidence, the person taking it shall certify thereon that he has complied with the provisions of this rule.

Abstract of
evidence.
Fifth Schedule.

10. (1) An abstract of evidence shall be made in the following way and shall be in accordance with the form set out in the Fifth Schedule —

- (a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the accused should not be present while the abstract of evidence is being made;
- (c) it shall consist of a signed statement by, or a precis of the evidence of, each witness whose evidence is necessary to prove the charge; and
- (d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with paragraph (1) of this rule, a copy of it shall be handed to the accused who shall then be cautioned in the following terms:

“This is a copy of the abstract of evidence in your case; you are not obliged to say anything with regard to it unless you wish to do so, but you should read it, and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence.”

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and, unless he declines to do so, signed by the accused.

(3) Irrespective of whether he makes a statement, the accused may submit statements of witnesses.

(4) Any statement made by or submitted by the accused shall be attached to the abstract of evidence and form part of it.

(5) A certificate in the form set out in the Fifth Schedule by the person who complied with paragraph (2) of this rule shall be attached to the abstract of evidence and form part of it.

Fifth Schedule.

11. (1) Before a commanding officer deals summarily with a charge after evidence has been reduced to writing —

Further investigation before summary dealing where evidence reduced to writing.

(a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and

(b) the commanding officer shall give the accused a further opportunity to give evidence on oath or make a statement without being sworn and to call witnesses in his defence.

(2) Where a commanding officer has conducted further investigation under paragraph (1) he may proceed to deal with the matter in accordance with rule 7(2)(b) and (c) or 7(3)(g) and (h).

Remand for Trial by Court-Martial

12. (1) After investigation of a charge and after the period of twenty-four hours referred to in rule 8(2) has, where appropriate, elapsed, the commanding officer shall, if he has not dismissed the charge and if he has not dealt with it summarily, remand the accused for trial by court-martial.

Remand for trial by court-martial.

(2) At the time of remand the commanding officer shall, where he considers it necessary to do so having regard to his knowledge of the circumstances of the offence, inform the accused of the requirements of section 170 of the Criminal Procedure Code Act relating to the defence of alibi.

Reference of charges to Commander Defence Force for trial by Court-martial.

13. (1) When a commanding officer has remanded an accused for trial by court-martial he shall send to Commander Defence Force —

- (a) a copy of the charge on which the accused is held;
- (b) details of the charges upon which the commanding officer considers that the accused should be dealt with;
- (c) the summary or abstract of evidence;
- (d) the personal file of the accused; and
- (e) a recommendation as to how the charge should be proceeded with.

(2) After a commanding officer has referred a charge to Commander Defence Force in accordance with paragraph (1) of this rule, he shall not dismiss it unless so directed by Commander Defence Force.

Action by Commander Defence Force on receipt of a charge.

14. When Commander Defence Force receives a charge against an accused he may —

- (a) refer the charge back to the commanding officer with directions to dismiss the charge; or
- (b) save where the charge is incapable of summary disposal or where the accused has elected trial by court-martial, refer the charge back to the commanding officer with directions to deal summarily with it, or any additional or substituted charge under rule 6(3); or
- (c) convene a court-martial to try the accused.

Action by commanding officer on reference back.

15. When a charge is referred back to the commanding officer in accordance with rule 14, the commanding officer shall comply with any directions of Commander Defence Force under that rule.

Framing of Charges

Charges.

16. (1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges but in no case shall they be laid in the alternative in the same charge and where charges are laid in the alternative they shall be set out in order of gravity commencing with the most serious.

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- (3) Each charge shall consist of two parts, namely —
- (a) the statement of the offence; and
 - (b) the particulars of the act, neglect or omission constituting the offence.
- (4) The statement of an offence, if it is not a civil offence, shall state the section and subsection of the Act which it is alleged has been violated and if it is a civil offence, it shall be in such words as sufficiently describe that offence.
- (5) The particulars shall state —
- (a) such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;
 - (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a less degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment, if convicted; and
 - (c) any additional facts which it is intended to prove as rendering the accused liable to the punishment of stoppages if convicted.
- (6) Each charge shall in its lay-out follow the illustration in the Sixth Schedule. Sixth Schedule.
- 17.** Any number of accused may be charged jointly in one charge for an offence alleged to have been committed by them jointly. Joint charges.
- 18.** In the construction of a charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together. Construction of charges.
- 19.** (1) Subject to paragraphs (2) and (3), an accused who has elected to be tried by court-martial under rule 8, may withdraw his election at any time before his trial begins. Withdrawal of election of trial.

(2) An accused who has elected to be tried by court-martial, shall not be entitled to withdraw his election before he has been remanded for trial if his commanding officer is of opinion that it is undesirable that he should do so.

(3) An accused who has elected to be tried by court-martial, shall not be entitled to withdraw his election after he has been remanded for trial except with the permission of Commander Defence Force.

Procuring
attendance of
witnesses.

20. (1) A witness who is subject to service law, may be ordered by the proper service authority to attend the taking of a summary of evidence or to give evidence when a charge is dealt with summarily by the commanding officer of the accused.

Seventh
Schedule.

(2) A witness who is not subject to service law, may be summoned to attend a summary of evidence or to give evidence when a charge is dealt with summarily by the commanding officer of the accused by an order, in the appropriate form set out in the Seventh Schedule, under the hand of the commanding officer.

(3) The order shall be served on the witness either personally or by leaving it with some person at the witness' normal place of abode.

(4) At the time of service of the order there shall be paid or tendered to the witness any travelling or other expenses as may be specified in instructions made by the Minister:

Provided that the tender of a written undertaking on behalf of the Minister to defray any expenses payable under such instructions in respect of the witness' attendance shall be deemed to constitute tender of those expenses.

Offences by
civilians in
relation to
summaries of
evidence and
summary
dealings.

21. The provisions of section 104 of the Act shall apply in relation to proceedings at the taking of a summary of evidence and before a commanding officer as they apply in relation to proceedings at a court-martial, and, when so applied, they shall be construed as though the words "officer taking the summary of evidence" or, as the case may be, "commanding officer" were substituted for the word "president of the court-martial".

22. Subject to rule 7(3)(a) (which permits the use of written statements of prosecution witnesses where the accused does not object), where a charge is dealt with summarily by the commanding officer, the provisions of sub-sections (1) and (3) of section 102 and of section 103 of the Act shall apply in relation to those proceedings.

Evidence and privileges of witnesses where charges dealt with summarily by commanding officer.

23. (1) An oath which is required to be administered under these Rules shall be administered in the appropriate form set out in the Third Schedule:

Oaths and solemn affirmations.
Third Schedule.

Provided that the opening words of the oath may be varied to such words and the oath administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Where the person is a child or young person the oath shall be in the appropriate form set out in the Third Schedule to these Rules.

Third Schedule.

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in the Third Schedule to these Rules.

Third Schedule.

(4) The provisions of section 105 of the Act shall apply to proceedings before a commanding officer and at the taking of a summary of evidence as they apply to proceedings before a court-martial.

24. (1) Any person subject to the Act who wishes to appeal against the finding or award of his commanding officer, shall do so by way of complaint in accordance with section 168 of the Act.

Review of summary awards.

(2) On receipt of such complaint the reviewing authority shall review the finding or award in accordance with section 114 of the Act.

25. A deviation or omission from a form or form of words set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Deviations from forms in Schedules.

26. In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

Cases not covered by Rules.

FIRST SCHEDULE (Rules 3 and 5)

FORM DF 241

RECORD OF INVESTIGATION

**PART I
CHARGE REPORT**

Name of unit
or sub-unit:

.....

ACCUSED Pay No.
 Rank
 Name
 Unit

ALLEGATION Place
 Date
 Offence.....
 Section of Act Contravened
 Brief facts

**OFFENCE
REPORTED BY** Pay No.....
 Rank.....
 Name
 Unit
 (Statement (if any) to be attached)

**OTHER
WITNESSES** Particulars:.....

 (Statements (if any) to be attached)

ARREST The accused was/was not arrested
 at (time)
 on (date) by
 (Pay no., rank, name, unit)
 and is still in arrest/has been released
 from arrest
 (date)
 (time)
 (Date)
 (Signed)
 (Pay No., rank, name and unit of person
 reporting offence or retaining accused in
 arrest).

FORM DF 242

**PART II
REVIEW OF ARREST BY COMMANDING OFFICER/
AUTHORISED OFFICER**

On (date) at..... (time)
the accused appeared before me and I informed
him of the allegation in Part I. I released him from
arrest/remanded him in close/open arrest/for
further inquiry/investigation/summary or abstract
of evidence/for commanding officer.

A delay report has been/will be submitted on
to Commander Defence Force.

Signed:
(Commanding Officer)

Dated:

On..... (date) at..... (time)
I release the accused from arrest without
prejudice to re-arrest.

Signed:
(Commanding Officer)

or authorised
officer, as
appropriate.

Dated:

On..... (date) at..... (time)
I ordered the re-arrest of the accused on the
following grounds:

.....
.....

A delay report has been/will be submitted on
.....
to Commander Defence Force.

Signed:.....
(Commanding Officer)⁷⁷

Dated:

⁷⁷ or authorised officer, as appropriate.

FORM DF 243

**PART III
CHARGE SHEET**

A. Charge

STATEMENT OF OFFENCE

CONTRARY TO SECTION
OF THE DEFENCE ACT

in that he

PARTICULARS OF OFFENCE at (place)

on (date)

.....

On.....

(date) the accused appeared before me when the charge was read and explained to him.

Signed:.....
(Commanding Officer/Authorised Officer)

B. Substituted Charge

STATEMENT OF OFFICE

CONTRARY TO SECTION
OF THE DEFENCE ACT

in that he.....

PARTICULARS OF OFFENCE at (place)

on (date)

.....

.....

Having completed my investigation I considered that the above charge should be substituted for the charge originally preferred and on (date) the accused appeared before when the substituted charge was read and explained to him.

Signed:

(Commanding Officer/Authorised Officer)

FORM DF 244

PART IV
SUMMARY OF ABSTRACT OF EVIDENCE

A summary of evidence/an abstract of evidence shall be taken.

Dated

Signed.....

(Commanding Officer)

Having read the summary/abstract of evidence on..... day of 19.... I decided to dismiss the charge/deal summarily with the charge/apply for trial by court-martial.

Signed.....

(Commanding Officer)

FORM DF 245

PART V
REFERENCE OF CHARGE(S) TO COMMANDER
DEFENCE FORCE

A. To deal summarily

APPLICATION Application is made/to deal summarily with this charge/to deal summarily with this officer

Dated day of 19.....

Signed.....

(Commanding Officer/
Authorised Officer)

DIRECTION Application/granted/
refused
and the commanding officer is directed to dismiss the charge and a court-martial will be convened to deal with the change

Dated day of
19.....

Signed

(Commander Defence Force)

B. For trial by court-martial

APPLICATION Application is made for trial of this charge by court-martial.

The accused has/has not/elected trial on the charge.

Dated day of 19.....

Signed.....

(Commanding Officer)

DIRECTION

Application/granted

refused

and the commanding officer is directed

to dismiss the charge/to deal summarily with the case/on an additional/substituted charge as follows:

Dated day of 19.....

Signed.....

(Commanding Defence Force)

FORM DF 246

PART VI

DISPOSAL OF CHARGE(S)

Plea: Guilty/Not Guilty

FINDING (if any)

The accused did not elect/was not entitled to elect/elected trial by court-martial.

AWARD (if any)

or

WARRANT applied for

Signed.....

(Commanding Officer/
Authorised Officer)

WARRANT read to the accused on (date)

Signed.....

(No., ranks, name, unit of person reading warrant)

DISMISSAL

Having been so directed by Commander Defence Force/decided that no further action should be taken on the charge/found the accused not guilty/the charge is dismissed.

Dated day of 19.....

Signed.....

(Commanding Officer/
Authorised Officer)

FORM DF 247

PART VII PUNISHMENT WARRANT

APPLICATION Having taken into account

- a. The accused's enclosed personal file;
- b. The fact that he has spent days in close/open arrest; and
- c. The following mitigating factors:

I proposed that the accused be sentenced to:
.....

Dated day of 19.....

Signed.....

(Commanding Officer/
Authorised Officer)

WARRANT The proposed sentence is approved/returned
for reconsideration.

Dated day of 19.....

Signed.....

(Commander Defence Force)

SECOND SCHEDULE (Rule 4)

FORM DF 248

(1) DELAY REPORT

Unit Address:.....

Tel:

To Commander Defence Force

⁷⁸ DELAY REPORT

Pursuant to section 82(2) of the Defence Act, pay
Number, rank name of accused

⁷⁸ Insert "1", "2", "3", "Final" or as the case may be.

THIRD SCHEDULE (Rules 7, 9 and 23)

OATHS AND AFFIRMATIONS

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

Witness

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

Child or Young Person

I promise before Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

Manner of Administering Oaths

Christians taking the oath shall, unless female, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Jews shall take the oath in the same manner except that they shall wear their head-dress and hold the Old Testament to their right hand.

Solemn Affirmations

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation “I (name in full) do solemnly, sincerely and truly declare and affirm that/I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated/the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth” as appropriate.

FOURTH SCHEDULE (Rule 9)

SUMMARY OF EVIDENCE

Summary of evidence in the case of
 (pay number, rank, name, unit or other description)

Taken by/the commanding officer of the accused./.....(rank, name, unit or other description) on the direction of the commanding officer of the accused./

..... (pay number, rank, name, unit or other
witness for description) having been duly sworn⁸² states —
the

prosecution (Cross-examined by the accused)

⁸³ Question 1

Answer 1

or

(The accused declines to cross-examine this
witness)

.....
(Signature and, rank (if any) of witness)

or

..... (pay number, rank,
witness for name, unit or other description).
the
prosecution

A written statement of this witness' evidence
purporting to be signed by him has been read
to the accused and is included in this
summary at page.... Having regard
to.....(insert grounds for non-
attendance of witness — see rule 9(b)) the
attendance of this witness cannot in my
opinion be readily procured.

/The accused does not demand the attendance
of this witness for cross-examination./ /The
accused demands the attendance of this
witness for cross-examination but the witness
is not compellable and has refused to attend./

.....
(Signature of officer/attorney taking the
summary of evidence)

The accused having been duly cautioned in
accordance with Rule of Procedure 9(c)
reserves his defence

or

The accused having been duly cautioned in
accordance with Rules of Procedure 9(c)

⁸² When a witness or the accused affirms the words “duly affirmed” should be substituted for the words “been duly sworn” and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words “without being sworn” should be substituted for the words “having been duly sworn”.

⁸³ See however, Rule 9(g).

.....
 elects/to give evidence on oath/ /to make a
 statement without being sworn/and to call a
 witness(es).⁸⁴
 witness for
 the defence
⁸⁵ + The accused (name, unit or other description)
 having been duly sworn⁸⁶ states —

.....
 (Signature and rank (if any) of accused if he signs)

.....
 witness for
 the defence
 (pay number, rank, name, unit or other
 description) having been duly sworn⁸⁷ states —

.....
 (Signature and rank (if any) of witness)

or

.....
 witness for
 the defence
 (pay number, rank, name, unit or
 other description)

A written statement of this witness' evidence
 purporting to be signed by him has been read to
 the accused and is included in this summary at
 page

Having regard to

.....
 (insert grounds for non-attendance of witness) the
 attendance of this witness cannot in my opinion be
 readily procured.

.....
 (Signature of officer/attorney taking the summary
 of evidence)

Certified that Rule of Procedure 9 has been
 complied with.

This summary of evidence was taken by me at

⁸⁴ Omit the words “and to call a witness(es)” if they are not applicable.

⁸⁵ If the accused makes an unsworn statement amend accordingly.

⁸⁶ When a witness or the accused affirms the words “duly affirmed” should be substituted for the words “been duly sworn” and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words “without being sworn” should be substituted for the words “having been duly sworn”.

⁸⁷ When a witness or the accused affirms the words “duly affirmed” should be substituted for the words “been duly sworn” and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words “without being sworn” should be substituted for the words “having been duly sworn”.

in the presence and bearing of the accused on the day(s) of 19....

.....
(Signature of officer/attorney taking the summary of evidence)

FIFTH SCHEDULE (Rule 10)

(1) ABSTRACT OF EVIDENCE

Abstract of evidence in the case of (pay number, rank, name, unit or other description) consisting of the.....
(insert the number of statements) attached statements ⁸⁸
and (insert the number of precis) precis of evidence ⁸⁹ of witnesses for the prosecution and compiled by me ⁹⁰ /the commanding officer of the accused ⁹¹
//.....
on the direction of the commanding officer of the accused./

Dated19..... |
(Signature and rank)

(2) CERTIFICATE TO BE ATTACHED TO THE ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I ⁹²
.....
on the.....day of.....19....
handed to the accused ⁹³
a copy of the abstract of evidence relating to him dated the.....day of19.....
and duly cautioned him in accordance with Rule of Procedure 10(2) and that/on
the.....day of19....

⁸⁸ Where an accused has made a written statement to a witness and that statement is produced by the witness it is not included in the number of statements but is treated as an exhibit.

⁸⁹ Strike out any reference to statements or precis which are not applicable.

⁹⁰ Insert name and rank of the officer making the abstract.

⁹¹ Insert name and rank of the officer making the abstract.

⁹² Insert rank, name and unit of officer signing the certificate.

⁹³ Insert pay number, rank, name unit or other description of the accused.

he elected to make and sign the statement which is marked and attached to this certificate/ /he did not make a statement/.

/The accused submitted statements of evidence for the defence which are marked /respectively/and attached to this certificate/.

Dated 19..... |
(Signature of certifying officer) |

SIXTH SCHEDULE (Rule 16)

ILLUSTRATION OF CHARGES

Section 44

IMPROPERLY LEAVING HIS SHIP CONTRARY TO SECTION 44(b) OF THE DEFENCE ACT

in that he

at..... on
improperly left Her Majesty's Bahamian Ship Flamingo.

Section 78

COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 78 OF THE DEFENCE ACT, THAT IS TO SAY MURDER CONTRARY TO SECTION 291 OF THE PENAL CODE (CHAPTER 84)

in that he

at on
murdered John Bull.

SEVENTH SCHEDULE (Rule 20)

SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE OR SUMMARY TRIAL

To⁹⁴

WHEREAS a charge has been preferred against⁹⁵

⁹⁴ Insert name and address of the person to whom the summons is to be sent.

⁹⁵ Insert pay number, rank, name, unit or other description of the accused.

⁹⁶⁺ AND WHEREAS I have directed a summary of the evidence to be taken at

.....⁹⁷ on the.....day of.....19.....

⁹⁸⁺ AND WHEREAS the charge is to be tried by me at ⁹⁹

.....
on the.....day of.....19.....

YOU ARE PURSUANT TO SECTION 133 OF THE DEFENCE ACT AND RULE 20 OF THE DEFENCE RULES OF PROCEDURE (PART I) MADE THEREUNDER HEREBY SUMMONED and required to attend as a witness the taking of the said/summary of evidence/trial/at.....¹⁰⁰

on the.....day of.....19... at o'clock in the morning/afternoon/ and to bring with you the documents hereinafter mentioned viz: ¹⁰¹

Whereof you shall fail at your peril.

Given under my hand at.....on the.....day of.....19.....

.....
(Signature, rank and unit)
Commanding officer of the accused

S.I. 54/1985

DEFENCE RULES OF PROCEDURE (PART II)

(SECTION 133)

[Commencement 20th September, 1984]

Citation. **1.** These Rules may be cited as the Defence Rules of Procedure (Part II).

Interpretation. **2.** In these Rules, unless the context otherwise require —

⁹⁶ Delete as appropriate.

⁹⁷ Insert the place where the summary of evidence is to be taken or trial held.

⁹⁸ Delete as appropriate.

⁹⁹ Insert the place where the summary of evidence is to be taken or trial held.

¹⁰⁰ Insert the place where the summary of evidence is to be taken or trial held.

¹⁰¹ Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents, strike out the words relating to documents.