

(b) *Contraband*. If items covered by subsection (a) of this rule are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the hearing.

(c) *Privilege*. If items covered by subsection (a) of this rule are privileged, classified or otherwise protected under Section V of Part III, no disclosure of those items is required under this rule.

However, counsel for the government may disclose privileged, classified, or otherwise protected information covered by subsection (a) of this rule if authorized by the holder of the privilege, or in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(d) *Protective order if privileged information is disclosed*. If the government agrees to disclose to the accused information to which the protections afforded by Section V of Part III may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)-(6) or 506(g)(2)-(5).”

(k) R.C.M. 405 is amended to read as follows:

“Rule 405. Preliminary hearing

(a) *In general*. Except as provided in subsection (k) of this rule, no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. A preliminary hearing conducted under this rule is not intended to serve as a means of discovery and will be limited to an examination of those issues necessary to determine whether there is probable cause to conclude that an offense or offenses have been committed and whether the accused committed it; to determine whether a court-

martial would have jurisdiction over the offense(s) and the accused; to consider the form of the charge(s); and to recommend the disposition that should be made of the charge(s). Failure to comply with this rule shall have no effect on the disposition of the charge(s) if the charge(s) is not referred to a general court-martial.

(b) *Earlier preliminary hearing.* If a preliminary hearing of the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the preliminary hearing and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further preliminary hearing is required.

(c) *Who may direct a preliminary hearing.* Unless prohibited by regulations of the Secretary concerned, a preliminary hearing may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent with these rules.

(d) *Personnel.*

(1) *Preliminary hearing officer.* Whenever practicable, the convening authority directing a preliminary hearing under this rule shall detail an impartial judge advocate certified under Article 27(b), not the accuser, as a preliminary hearing officer, who shall conduct the preliminary hearing and make a report that addresses whether there is probable cause to believe that an offense or offenses have been committed and that the accused committed the offense(s); whether a court-martial would have jurisdiction over the offense(s) and the accused; the form of the charges(s); and a recommendation as to the disposition of the charge(s).

When the appointment of a judge advocate as the preliminary hearing officer is not practicable, or in exceptional circumstances in which the interest of justice warrants, the convening authority directing the preliminary hearing may detail an impartial commissioned officer, who is not the accuser, as the preliminary hearing officer. If the preliminary hearing