

that the preliminary hearing be reopened or take other action, as appropriate. For cases where a special trial counsel has exercised authority, the special trial counsel may request the convening authority reopen the preliminary hearing. Upon such request, the convening authority shall reopen the preliminary hearing. This paragraph does not prohibit a convening authority or special trial counsel from taking other action prior to the expiration of five days allotted for submitting objections. Failure to make a timely objection under this rule shall constitute waiver of the objection.

(n) *Waiver*. The accused may waive a preliminary hearing. However, the preliminary hearing may still be conducted notwithstanding the waiver. Relief from the waiver may be granted by the convening authority, a superior convening authority, or the military judge, as appropriate, for good cause shown. For offenses over which a special trial counsel has exercised authority, a special trial counsel may grant relief from the waiver. If a special trial counsel declines to grant relief from the waiver and the case is referred, the accused may request relief from the military judge.”

(gg) R.C.M. 406 is amended to read as follows:

“Rule 406. Pretrial advice and special trial counsel determinations

(a) *Pretrial Advice by the Staff Judge Advocate*.

(1) *General court-martial*. Except as provided by R.C.M. 406(b), before any charge may be referred for trial by a general court-martial, it shall be submitted to the staff judge advocate of the convening authority for consideration and advice. The advice of the staff judge advocate shall include a written and signed statement which sets forth the staff judge advocate’s:

(A) Conclusion with respect to whether each specification alleges an offense under the UCMJ;

(B) Conclusion with respect to whether there is probable cause to believe that the accused committed the offense charged in the specification;

(C) Conclusion with respect to whether a court-martial would have jurisdiction over the accused and the offense; and

(D) Recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline.

(2) *Special-court martial*. Subject to R.C.M. 406(b), before any charge may be referred for trial by a special court-martial, the convening authority shall consult a judge advocate on relevant legal issues. Such issues may include:

(A) Whether each specification alleges an offense under the UCMJ;

(B) Whether there is probable cause to believe the accused committed the offense(s) charged;

(C) Whether a court-martial would have jurisdiction over the accused and the offense;

(D) The form of the charges and specifications and any necessary modifications; and

(E) Any other factors relating to disposition of the charges and specifications in the interest of justice and discipline.

(b) *Special trial counsel determinations*. For all charges alleging covered offenses, and other charges over which special trial counsel has exercised authority and has not deferred, referral to a special or general court-martial may be made only by a special trial counsel and the referral must be accompanied by a special trial counsel's written determination that:

(1) each specification under a charge alleges an offense under the UCMJ;