

(2) there is probable cause to believe that the accused committed the offense charged; and

(3) a court-martial would have jurisdiction over the accused and the offense.

(c) *Distribution.*

(1) Subject to R.C.M. 406(c)(2), a copy of the written advice of the staff judge advocate shall be provided to the defense if charges are referred for trial by general court-martial.

(2) For those cases over which special trial counsel exercises exclusive authority, a copy of the written determination by special trial counsel shall be provided to the defense if charges are referred for trial by general or special court-martial.”

(hh) R.C.M. 406A is deleted.

(ii) R.C.M. 407(a)(1) is amended to read as follows:

“(a) *Disposition.* Except for covered offenses and any other charges over which a special trial counsel has exercised authority and has not deferred, a commander exercising general court-martial jurisdiction, when in receipt of charges, may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing charges, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer any charge to a summary court-martial or to a special court-martial for trial;

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, after which additional action under this rule may be taken;

(6) Subject to R.C.M. 601(d), refer any charge to a general court-martial.”

(jj) R.C.M. 407(b) is amended to read as follows:

“(b) *National security matters.*

(1) Subject to R.C.M. 407(b)(2), when in receipt of charges the trial of which the commander exercising general court-martial jurisdiction finds would probably be detrimental to the prosecution of a war or harmful to national security, that commander, unless otherwise prescribed by regulations of the Secretary concerned, shall determine whether trial is warranted and, if so, whether the security considerations involved are paramount to trial. As the commander finds appropriate, the commander may dismiss the charges, authorize trial of them, or forward them to a superior authority.

(2) For charges and specifications over which a special trial counsel has exercised authority and has not deferred and a commander believes trial would be detrimental to the prosecution of a war or harmful to national security, the matter shall be forwarded to the Secretary concerned.

(kk) A new R.C.M. 502(d)(1)(C) is inserted immediately after R.C.M. 502(d)(1)(B) to read as follows:

“(C) *Qualifications of special trial counsel.* Only judge advocates qualified, certified, and assigned as special trial counsel may be detailed as special trial counsel in general and special courts-martial. In accordance with regulations prescribed by the Secretary concerned, a special trial counsel shall be a judge advocate who is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by the Judge Advocate General of the armed force of which the officer is a member or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps. Special trial