

(B) A special trial counsel has made a written determination as required under R.C.M. 406(b) and Article 34(c).

(4) *Special courts-martial.* Charges may not be referred to a special court-martial unless:

(A) The convening authority has consulted with a judge advocate as required under R.C.M. 406(a)(2) and Article 34(b); or

(B) A special trial counsel has made a written determination as required under R.C.M. 406(b) and Article 34(c).

(e) *How charges shall be referred.*

(1) *Order, instructions.* Referral shall be by the personal order of the referral authority.

(A) *Capital cases.* If a case is to be tried as a capital case, the referral authority shall so indicate by including a special instruction on the charge sheet in accordance with R.C.M. 1004(b)(1).

(B) *Special court-martial consisting of a military judge alone.* If a case is to be tried as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), the referral shall so indicate by including a special instruction on the charge sheet prior to arraignment.

(C) *Other instructions.* The referral authority may include any other additional instructions in the order as may be required.

(2) *Joinder of offenses.* In the discretion of the referral authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious or minor offenses or both, regardless of whether the offenses are connected. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements concerning the additional charges have been complied with. After

arraignment of the accused upon charges, no additional charges may be referred to the same trial without consent of the accused.

(3) *Joinder of accused.* Allegations against two or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such accused may be charged in one or more specifications together or separately, and every accused need not be charged in each specification. Related allegations against two or more accused which may be proved by substantially the same evidence may be referred to a common trial.

(f) *Superior convening authorities.* Except as otherwise provided in these rules, a superior competent authority may cause charges, whether or not referred, to be transmitted to the authority for further consideration, including, if appropriate, referral.

(g) *Parallel convening authorities.*

(1) Except as provided in R.C.M. 601(g)(2), if it is impracticable for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if referred, to be transmitted to a parallel convening authority. This transmittal must be in writing and in accordance with such regulations as the Secretary concerned may prescribe. Subsequent actions taken by the parallel convening authority are within the sole discretion of that convening authority.

(2) For offenses over which a special trial counsel has exercised authority and has not deferred, a convening authority seeking to transfer charges to a parallel convening authority may do so in accordance with these rules and such regulations prescribed by the Secretary concerned.”

(tt) R.C.M. 603(a) is amended to read as follows: