

“(1) *Before referral*. Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by any applicable convening authority, or by a military judge or magistrate in a proceeding conducted in accordance with R.C.M. 309.”

(kkk) R.C.M. 706(b)(2) is amended to read as follows:

“(2) *After referral*. After referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the military judge. The convening authority may order such an inquiry after referral of charges but before beginning of the first session of the court-martial (including any Article 39(a) session) when the military judge is not reasonably available. The military judge may order a mental examination of the accused regardless of any earlier determination by any authority.”

(lll) R.C.M. 707(b)(3)(D) is amended to read as follows:

“(D) *Rehearings*. If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority or, for charges and specifications referred by a special trial counsel, the special trial counsel receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803.”

(mmm) R.C.M. 707(c)(1) is amended to read as follows:

“(1) *Procedure*. Prior to referral, all requests for pretrial delay, together with supporting reasons and with notice to the defense, will be submitted to a convening authority with authority over the accused for resolution. The convening authority may delegate this authority to an

Article 32 preliminary hearing officer. After referral, such requests for pretrial delay will be submitted to the military judge for resolution.”

(nnn) R.C.M. 707(d)(1) is amended to read as follows:

“(1) *Dismissal*. Dismissal will be with or without prejudice to the Government’s right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a re-prosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.”

(ooo) R.C.M. 707(f) is amended as follows:

“(f) *Priority*. When considering the disposition of charges and the ordering of trials, a convening authority or special trial counsel shall give priority to cases in which the accused is held under those forms of pretrial restraint defined by R.C.M. 304(a)(3)-(4). Trial of or other disposition of charges against any accused held in arrest or confinement pending trial shall be given priority.”

(ppp) R.C.M. 804 is amended to read as follows:

“Rule 804. Presence at court-martial proceedings

(a) *Accused*.

(1) *Presence required*. The accused shall be present at the arraignment, the time of the plea, every stage of the trial including sessions conducted under Article 39(a), voir dire and challenges of members, the return of the findings, presentencing proceedings, and post-trial sessions, if any, except as otherwise provided by this rule. Attendance at these proceedings shall