

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

constitute the accused's appointed place of duty and, with respect to the accused's travel allowances, none of these proceedings shall constitute disciplinary action. This does not in any way limit authority to implement restriction, up to and including confinement, as necessary in accordance with R.C.M. 304 or R.C.M. 305.

(A) *Appearance*. The accused shall be properly attired in the uniform or dress prescribed by the military judge. An accused service member shall wear the insignia of grade and may wear any decorations, emblems, or ribbons to which the accused is entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused's commander shall render such assistance as may be reasonably necessary to ensure that the accused is properly attired.

(B) *Custody*. Responsibility for maintaining custody or control of an accused before and during trial may be assigned, subject to R.C.M. 304 and 305, and R.C.M. 804(c)(3), under such regulations as the Secretary concerned may prescribe.

(C) *Restraint*. Physical restraint shall not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge.

(2) *Continuation of proceeding without presence*. The further progress of the trial to and including the return of the findings and, if necessary, determination of a sentence shall not be prevented and the accused shall be considered to have waived the right to be present whenever an accused, initially present:

(A) Is voluntarily absent after arraignment (whether or not informed by the military judge of the obligation to remain during the trial); or