

permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals. If the case is reviewed by the Court of Appeals for the Armed Forces, R.C.M. 1204 and 1205 shall apply.

(gggg) R.C.M. 909(c) is revised to read as follows:

“(c) Determination before referral.

(1) For offenses over which special trial counsel has not exercised authority or has deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, the convening authority shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then the general court-martial convening authority shall commit the accused to the custody of the Attorney General. If the general court-martial convening authority does not concur, that authority may take any action that he or she deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(2) For offenses over which special trial counsel has exercised authority and has not deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally

incompetent to stand trial, the general court-martial convening authority may disagree with the conclusion and notify special trial counsel who may take any action authorized under R.C.M. 401A, including referral of charges. If the general court-martial convening authority concurs with the conclusion, that authority shall notify special trial counsel and commit the accused to the custody of the Attorney General.

(3) Upon request of the Government or the accused, a military judge may conduct a hearing to determine the mental capacity of the accused in accordance with R.C.M. 309 and R.C.M. 909(e) at any time prior to referral.”

(hhhh) R.C.M. 909(g) is amended to read as follows:

“(g) *Excludable delay.* All periods of commitment shall be excluded as provided by R.C.M. 707(c). The 120-day time period under R.C.M. 707 shall begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment. For offenses over which a special trial counsel has exercised authority and not deferred, the general court-martial convening authority shall immediately notify a special trial counsel in accordance with regulations prescribed by the Secretary concerned.”

(iiii) R.C.M. 910(a) is amended to read as follows:

“(a) *Types of pleas.*

(1) *In general.* An accused may plead as follows:

(A) guilty;

(B) not guilty of an offense as charged, but guilty of a named lesser included offense;

(C) guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or