

(6) *Action when accused lacks mental capacity.* In a review conducted under R.C.M. 1203(b) or (c), the Court of Criminal Appeals may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the Court of Criminal Appeals may direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The Court may further order a remand under R.C.M. 810(f) as may be necessary. If the record is thereafter returned to the Court of Criminal Appeals, the Court of Criminal Appeals may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence—including matters outside the record of trial—that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the Court of Criminal Appeals shall stay the proceedings until the accused regains appropriate capacity or take other appropriate action. Nothing in this subsection shall prohibit the Court of Criminal Appeals from making a determination in favor of the accused which will result in the setting aside of a conviction.”

(zzzz) R.C.M. 1203(f)(1) is amended to read as follows:

“(1) *Notification of decision.* The accused shall be notified of the decision of the Court of Criminal Appeals in accordance with regulations prescribed by the Secretary concerned.”

(aaaaa) R.C.M. 1204(c)(1) is amended to read as follows:

“(1) *In general.* After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for

further proceedings in accordance with the decision of the court. Otherwise, unless the decision is subject to review by the Supreme Court, or there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the appropriate authority to take action in accordance with that decision. If the Court has authorized a rehearing, but the convening authority to whom the record is transmitted finds a rehearing impracticable, the convening authority may dismiss the charges. If a special trial counsel referred the affected charges, the special trial counsel shall determine if a rehearing is impracticable. If a special trial counsel determines a rehearing is impracticable, the special trial counsel shall dismiss the charges.”

(bbbbb) R.C.M. 1204(c)(4) amended to read as follows:

“(4) *Decisions subject to review by the Supreme Court.* If the decision of the Court of Appeals for the Armed Forces is subject to review by the Supreme Court, the Judge Advocate General shall take no action under R.C.M. 1204(c)(1), (2), or (3) until:

(A) the time for filing a petition for a writ of certiorari with the Supreme Court has expired; or

(B) the Supreme Court has denied any petitions for writ of certiorari filed in the case.”

(ccccc) A new R.C.M. 1204(c)(5) is inserted immediately after R.C.M. 1204(c)(4) to read as follows:

“(5) Upon the occurrence of an event described by R.C.M. 1204(c)(4)(A) or (B), the Judge Advocate General shall take action in accordance with R.C.M. 1204(c)(1), (2), or (3). If the Supreme Court issues a writ of certiorari, the Judge Advocate General shall take action under R.C.M. 1205(b).”