

“(a) *Who may dispose of charges.* Only persons authorized to convene courts-martial or to administer nonjudicial punishment under Article 15 may dispose of charges, except for those charges over which a special trial counsel has exercised authority and which must be disposed of in accordance with R.C.M. 401A. A superior competent authority may withhold the authority of a subordinate to dispose of charges in individual cases, types of cases, or generally.”

**(aa) A new R.C.M. 401A is inserted immediately after R.C.M. 401 to read as follows:**

**“Rule 401A. Disposition of charges over which a special trial counsel exercises authority and has not deferred**

(a) *Who may dispose of preferred specifications.* Regardless of who preferred a specification, only a special trial counsel may dispose of a specification alleging a covered offense or another offense over which a special trial counsel has exercised authority and has not deferred. A superior competent authority may withhold the authority of a subordinate special trial counsel to dispose of offenses charged in individual cases, types of cases, or generally.

(b) *Prompt determination.* Special trial counsel shall promptly determine what disposition will be made in the interest of justice and discipline.

(c) *Disposition of preferred specifications.*

(1) *Referral.* For those offenses over which a special trial counsel has exercised authority and not deferred, a special trial counsel may refer a charge and any specification thereunder to a special or general court-martial. If a preliminary hearing in accordance with Article 32 and R.C.M. 405 is required, a special trial counsel shall request a hearing officer and a hearing officer shall be provided by the convening authority.

(2) *Dismissal.* For those offenses over which a special trial counsel has exercised authority and not deferred, a special trial counsel may dismiss any charge or specification

thereunder. A dismissal may be accompanied by a deferral as defined in this rule. Further disposition by a special trial counsel in accordance with this rule or by a convening authority pursuant to RCM 306(c) is not barred.

(3) *Deferral.*

(A) *Pre-referral.* A special trial counsel may defer a charged offense by electing not to refer the charged offense to a special or general court-martial. Upon such a determination, the special trial counsel shall promptly forward the matter to the commander or convening authority for disposition. The commander or convening authority shall dispose of the offense pursuant to R.C.M. 306 or the charged offense pursuant to R.C.M. 401, as applicable. The commander or convening authority may dismiss a charge preferred by a special trial counsel. However, a convening authority may not refer a charge alleging a covered offense to a special or general court-martial.

(B) *Post-referral.* After referral, a charge referred to a general or special court-martial by a special trial counsel must be withdrawn before the offense alleged by that charge may be deferred.”

**(bb) R.C.M. 402 is amended to read as follows:**

**“Rule 402. Action by commander not authorized to convene courts-martial**

Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander authorized to administer nonjudicial punishment but not authorized to convene courts-martial may:

- (1) Dismiss any charge; or
- (2) Forward any charge to a superior commander for disposition.”

**(cc) R.C.M. 403 is amended to read as follows:**