

**“Rule 403. Action by commander exercising summary court-martial jurisdiction.**

(a) *Recording receipt.* Immediately upon receipt of sworn charges, an officer exercising summary court-martial jurisdiction over the command shall cause the hour and date of receipt to be entered on the charge sheet. After recording receipt of charges over which a special trial counsel has exercised authority and has not deferred, the charge sheet shall be returned to the special trial counsel.

(b) *Disposition.* 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 exercising summary court-martial jurisdiction may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing a charge, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 601(d) and 1301(c), refer any charge to a summary court-martial for trial; or

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition.”

**(dd) R.C.M. 404 is amended to read as follows:****“Rule 404. Action by commander exercising special court-martial jurisdiction**

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 exercising special court-martial jurisdiction may:

- (1) Dismiss any charge;
- (2) Forward any charge (or, after dismissing a charge, the matter) to a subordinate commander for disposition;
- (3) Forward any charge to a superior commander for disposition;
- (4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer any charge to a summary court-martial or to a special court-martial for trial; or
- (5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition.”

**(ee) R.C.M. 404A is deleted.**

**(ff) R.C.M. 405 is amended to read as follows:**

“Rule 405. Preliminary hearing.

- (a) *In general.* Except as provided in R.C.M. 405(n), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and to recommend the disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court-martial.
- (b) *Earlier preliminary hearing.* If a preliminary hearing on the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the