

judge advocate shall be provided to the defense if charges are referred to trial by general court-martial.

Rule 407. Action by commander exercising general court-martial jurisdiction

(a) *Disposition.* When in receipt of charges, a commander exercising general court-martial jurisdiction may:

- (1) Dismiss any charges;

Discussion

See R.C.M. 401(c)(1) concerning dismissal of charges and the effect of dismissing charges.

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

Discussion

See R.C.M. 401(c)(2)(B) concerning forwarding charges to a subordinate.

A subordinate commander may not be required to take any specific action or to dispose of charges. See R.C.M. 104. See also paragraph 1d(2) of Part V. When appropriate, charges may be sent or returned to a subordinate commander for compliance with procedural requirements. See, for example, R.C.M. 303 (preliminary inquiry); R.C.M. 308 (notification to accused of charges).

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

Discussion

See R.C.M. 401 (c)(2)(A) for guidance concerning forwarding charges to a superior.

(4) Refer charges to a summary court-martial or a special court-martial for trial;

Discussion

See R.C.M. 601; 1302(c).

(5) Unless otherwise prescribed by the Secretary concerned, direct a pretrial investigation under R.C.M. 405, after which additional action under this rule may be taken;

Discussion

An investigation should be directed when it appears the charges are of such a serious nature that trial by general court-martial may be warranted. See R.C.M. 405. If an investigation of the subject matter already has been conducted. See R.C.M. 405(b).

(6) Subject to R.C.M. 601(d), refer charges to a general court-martial.

Discussion

See Article 22 and R.C.M. 504(b)(1) concerning who may exercise general court-martial jurisdiction.

See R.C.M. 601 concerning referral of charges. See R.C.M. 306 and 401 concerning other dispositions.

(b) *National security matters.* When in receipt of charges the trial of which the commander exercising general court-martial jurisdiction finds would probably be inimical to the prosecution of a war or harmful to national security, that commander, unless otherwise prescribed by regulations of the Secretary concerned, shall determine whether trial is warranted and, if so, whether the security considerations involved are paramount to trial. As the commander finds appropriate, the commander may dismiss the charges, authorize trial of them, or forward them to a superior authority.

Discussion

In time of war, charges may be forwarded to the Secretary concerned for disposition under Article 43(e). Under Article 43(e), the Secretary may take action suspending the statute of limitations in time of war.