**Section 400.530 Referral of Charges**

a) General. Referral is the order of a convening authority that charges against an accused will be tried by a specified court-martial.

b) Any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor unless the power to do so has been withheld by superior competent authority.

c) An accuser may not refer charges to a general or special court-martial.

d) Basis for Referral. If the convening authority finds or is advised by a judge advocate that there are reasonable grounds to believe that an offense triable by a court-martial has been committed, the accused committed that offense, and the specification alleges an offense, the convening authority may refer it. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general court-martial except in compliance with subsection (e). The convening authority or judge advocate shall not be required, before charges are referred, to resolve legal issues, including objections to evidence, that may arise at trial.

e) General and Special Courts-Martial (see Code Section 34(a)). The convening authority may not refer a specification under a charge to a general or special court-martial unless:

1) There has been substantial compliance with the pretrial investigation requirements of Section 400.510; and

2) The convening authority has received the advice of the staff judge advocate required under Section 400.520. These requirements may be waived by the accused.

f) How Charges Shall be Referred

1) Order; Instructions. Referral shall be by the personal order of the convening authority. The convening authority shall include proper instructions in the order prescribed by RCM 601(e) (Discussion).

2) Joinder of Offenses. In the discretion of the convening authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious offenses or minor offenses (see Section 400.1200) or both, regardless of whether related. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements have been met concerning the additional charges. After arraignment of the accused upon the charges, no additional charges may be referred to the same trial without consent of the accused.

3) Joinder of Accused. Allegations against 2 or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The accused may be charged in one or more specifications, together or separately, and every accused need not be charged in each specification. Related allegations against 2 or more accused that may be proved by substantially the same evidence may be referred to a common trial.

g) Superior Convening Authorities. Except as otherwise provided in this Section, a superior convening authority may cause charges, whether or not referred, to be transmitted to the convening authority for further consideration, including, if appropriate, referral.