

§ 16.4

which the suspension, remission, commutation, or other modification is contingent (usually relating to the performance, behavior or conduct of the Accused). Unless otherwise directed, a decision or action in accordance with such a recommendation will be effected by direction or delegation to the Appointing Authority by the official making a final decision on the sentence in accordance with of 32 CFR 9.6(h).

§ 16.4 Sentencing procedures.

(a) *General.* 32 CFR part 9 permits the military commission substantial discretion regarding the conduct of sentencing proceedings. Sentencing proceedings should normally proceed expeditiously. In the discretion of the Presiding Officer, as limited by the Appointing Authority, reasonable delay between the announcement of findings and the commencement of sentencing proceedings may be authorized to facilitate the conduct of proceedings in accordance with of 32 CFR 9.6(b).

(b) *Information relevant to sentencing.* 32 CFR 9.6(e)(10) permits the Prosecution and Defense to present information to aid the military commission in determining an appropriate sentence. Such information may include a recommendation of an appropriate sentence, information regarding sentence ranges for analogous offenses (e.g., the sentencing range under the Federal Sentencing Guidelines that could be applicable to the Accused for the most analogous federal offenses), and other relevant information. Regardless of any presentation by the Prosecution or Defense, the military commission shall consider any evidence admitted for consideration prior to findings regarding guilt. The Presiding Officer may limit or require the presentation of certain information consistent with 32 CFR part 9 and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism".

(c) *Cases involving plea agreements.* In accordance with 32 CFR 9.6(a)(4), after determining the voluntary and informed nature of a plea agreement approved by the Appointing Authority, the military commission is bound to adjudge findings and a sentence pursuant to that plea agreement. Accord-

32 CFR Ch. I (7-1-03 Edition)

ingly, the Presiding Officer may exercise the authority granted in of 32 CFR 9.6(e) to curtail or preclude the presentation of information and argument relative to the military commission's determination of an appropriate sentence.

(d) *Special duties.* In cases involving plea agreements or recommendations for certain conditions of imprisonment or prospective sentence modification, the Prosecution and Defense shall provide whatever post-trial information or recommendation as is relevant to any subsequent decision regarding such condition or suspension, remission, commutation, or other modification recommendation associated with the sentence.

PART 17—ADMINISTRATIVE PROCEDURES

Sec.

- 17.1 Purpose.
- 17.2 Authority.
- 17.3 Commission personnel.
- 17.4 Interlocutory questions.
- 17.5 Implied duties of the presiding officer.
- 17.6 Disclosures.

AUTHORITY: 10 U.S.C. 113(d) and 140(b).

SOURCE: 68 FR 39397, July 1, 2003, unless otherwise noted.

§ 17.1 Purpose.

This part promulgates policy, assigns responsibilities, and prescribes procedures for the conduct of trials by a military commission appointed pursuant to 32 CFR part 9 and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," (3 CFR 2001 Comp., p. 918, 66 FR 57833).

§ 17.2 Authority.

This part is issued pursuant to 32 CFR 9.7(a) and in accordance with Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," and 10 U.S.C. 113(d) and 140(b). The provisions of 32 CFR part 10 are applicable to this part.

§ 17.3 Commission personnel.

(a) *Appointment and removal of Commission members.* (1) In accordance with

32 CFR part 9, the Appointing Authority shall appoint at least three but no more than seven members and one or two alternate members. The Appointing Authority may remove members and alternate members for good cause. In the event a member (or alternate member) is removed for good cause, the Appointing Authority may replace the member, direct that an alternate member serve in the place of the original member, direct that proceedings simply continue without the member, or convene a new commission. In the absence of guidance from the Appointing Authority regarding replacement, the Presiding Officer shall select an alternate member to replace the member in question.

(2) The Presiding Officer shall determine if it is necessary to conduct or permit questioning of members (including the Presiding Officer) on issues of whether there is good cause for their removal. The Presiding Officer may permit questioning in any manner he deems appropriate. Consistent with 32 CFR part 9, any such questioning shall be narrowly focused on issues pertaining to whether good cause may exist for the removal of any member.

(3) From time to time, it may be appropriate for a Presiding Officer to forward to the Appointing Authority information and, if appropriate, a recommendation relevant to the question of whether a member (including the Presiding Officer) should be removed for good cause. While awaiting the Appointing Authority's decision on such matter, the Presiding Officer may elect either to hold proceedings in abeyance or to continue. The Presiding Officer may issue any appropriate instructions to the member whose continued service is in question. A military commission shall not engage in deliberations on findings or sentence prior to the Appointing Authority's decision in any case in which the Presiding Officer has recommended a member's removal.

(b) *Military commission security officer.* The Appointing Authority may detail a Security Officer to advise a military commission on matters related to classified and protected information. In addition to any other duties assigned by the Appointing Authority, the Security Officer shall ensure that all classified

or protected evidence and information is appropriately safeguarded at all times and that only personnel with the appropriate clearances and authorizations are present when classified or protected materials are presented before military commissions.

(c) *Other military commission personnel.* The Appointing Authority may detail court reporters, interpreters, security personnel, bailiffs, clerks, and any other personnel to a military commission as deemed necessary. In the absence of a detailing by the Appointing Authority, the Chief Prosecutor shall be responsible to ensure the availability of necessary or appropriate personnel to facilitate the impartial and expeditious conduct of full and fair trials by military commission.

§ 17.4 Interlocutory questions.

(a) *Certification of interlocutory questions.* The Presiding Officer shall generally adjudicate all motions and questions that arise during the course of a trial by military commission. In accordance with 32 CFR 9.4(a)(5)(iv), however, the Presiding Officer shall certify all interlocutory questions, the disposition of which would effect a termination of proceedings with respect to a charge, for decision by the Appointing Authority. In addition, the Presiding Officer may certify other interlocutory questions to the Appointing Authority as the Presiding Officer deems appropriate.

(b) *Submission of interlocutory questions.* The Presiding Officer shall determine what, if any, documentary or other materials should be forwarded to the Appointing Authority in conjunction with an interlocutory question.

(c) *Effect of interlocutory question certification on proceedings.* While decision by the Appointing Authority is pending on any certified interlocutory question, the Presiding Officer may elect either to hold proceedings in abeyance or to continue.

§ 17.5 Implied duties of the presiding officer.

The Presiding Officer shall ensure the execution of all ancillary functions necessary for the impartial and expeditious conduct of a full and fair trial by military commission in accordance