

Office of the Secretary of Defense

§ 18.2

with 32 CFR part 9. Such functions include, for example, scheduling the time and place of convening of a military commission, ensuring that an oath or affirmation is administered to witnesses and military commission personnel as appropriate, conducting appropriate *in camera* meetings to facilitate efficient trial proceedings, and providing necessary instructions to other commission members. The Presiding Officer shall rule on appropriate motions or, at his discretion consistent with 32 CFR part 9, may submit them to the commission for decision or to the Appointing Authority as a certified interlocutory question.

§ 17.6 Disclosures.

(a) *General.* Unless directed otherwise by the Presiding Officer upon a showing of good cause or for some other reason, counsel for the Prosecution and the Defense shall provide to opposing counsel, at least one week prior to the scheduled convening of a military commission, copies of all information intended for presentation as evidence at trial, copies of all motions the party intends to raise before the military commission, and names and contact information of all witnesses a party intends to call. Motions shall also be provided to the Presiding Officer at the time they are provided to opposing counsel. Unless directed otherwise by the Presiding Officer, written responses to any motions will be provided to opposing counsel and the Presiding Officer no later than three days prior to the scheduled convening of a military commission.

(b) *Notifications by the prosecution.* The Prosecution shall provide the Defense with access to evidence known to the Prosecution that tends to exculpate the Accused as soon as practicable, and in no instance later than one week prior to the scheduled convening of a military commission.

(c) *Notifications by the defense.* The Defense shall give notice to the Prosecution of any intent to raise an affirmative defense to any charge at least one week prior to the scheduled convening of a military commission.

(d) *Evidence related to mental responsibility.* If the Defense indicates an intent to raise a defense of lack of mental re-

sponsibility or introduce expert testimony regarding an Accused's mental condition, the prosecution may require that the Accused submit to a mental examination by a military psychologist or psychiatrist, and both parties shall have access to the results of that examination.

PART 18—APPOINTING AUTHORITY FOR MILITARY COMMISSIONS

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AUTHORITY: 10 U.S.C. 113 and 131(b)(8).

SOURCE: 69 FR 31292, June 3, 2004, unless otherwise noted.

§ 18.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the U.S. Constitution, Article II, Section 2, Clause 2, 10 U.S.C. 113 and 131(b)(8) and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," (66 FR 57833 (November 16, 2001)) ("President's Military Order") this part establishes the position and office of the Appointing Authority for Military Commissions, with the responsibilities, functions, relationships, and authorities as prescribed herein.

§ 18.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) Any special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States to serve as a prosecutor in trials before military commissions pursuant to section