

Office of the Secretary of Defense

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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

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4(B)(2) of DoD Military Commission Order No. 1,¹ “Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism,” March 21, 2002.

(c) Any civilian attorney who seeks qualification as a member of a pool of qualified Civilian Defense Counsel authorized in section 4(C)(3)(b) of DoD Military Commission Order No. 1; and to any attorney who has been qualified as a member of that pool.

§ 18.3 Organization.

(a) The Appointing Authority for Military Commissions is established in the Office of the Secretary of Defense under the authority, direction, and control of the Secretary of Defense.

(b) The Office of the Appointing Authority shall consist of the Appointing Authority, the Legal Advisor to the Appointing Authority, and such other subordinate officials and organizational elements as are established by the General Counsel of the Department of Defense within the resources assigned by the Secretary of Defense.

§ 18.4 Responsibilities and functions.

(a) The Appointing Authority for Military Commissions is an officer of the United States appointed by the Secretary of Defense pursuant to the U.S. Constitution and 10 U.S.C. In this capacity, the Appointing Authority for Military Commissions shall exercise the duties prescribed in DoD Military Commission Order No. 1 and this part and shall:

(1) Issue orders from time to time appointing one or more military commissions to try individuals subject to the President’s Military Order and DoD Military Commission Order No. 1; and appoint any other personnel necessary to facilitate military commissions.

(2) Appoint military commission members and alternate members, based on competence to perform the duties involved. Remove members and alternate members for good cause pursuant to Military Commission Instruction No. 8.

¹DoD Military Commission Orders and Instructions referenced in this Directive can be found at <http://www.dtic.mil/whs/directives/corres/mco.htm>.

(3) Designate a Presiding Officer from among the members of each military commission to preside over the proceedings of that military commission. The Presiding Officer shall be a military officer who is a judge advocate of any United States Armed Force.

(4) Approve and refer charges prepared by that Prosecution against an individual or individuals subject to Military Order of November 13, 2001.

(5) Approve plea agreements with an Accused.

(6) Decide interlocutory questions certified by the Presiding Officer.

(7) Ensure military commission proceedings are open to the maximum extent practicable. Decide when military commission proceedings should be closed pursuant to Military Order of November 13, 2001 and DoD Military Commission Order No. 1.

(8) Make decisions related to attendance at military commission proceedings by the public and accredited press and the public release of transcripts. Such matters, including policy and plans for media coverage shall be coordinated with the Assistant Secretary of Defense for Public Affairs (ASD(PA)) and, as appropriate, the Assistant Secretary of Defense for Special Operations/Low Intensity Conflict (ASD(SO/LIC)) under the Under Secretary of Defense for Policy (USD(P)).

(9) Approve or disapprove requests from the Prosecution and Defense to communicate with news media representatives regarding cases and other matters related to military commissions. Such matters shall be coordinated with the ASD(PA).

(10) Detail or employ personnel such as court reporters, interpreters, security personnel, bailiffs, and clerks to support military commissions, as necessary. When such details effect resources committed to operational missions, coordinate with the ASD (SO/LIC) under the USD(P) and the Heads of appropriate DoD Components.

(11) Order that such investigative or other resources be made available to Defense Counsel and the Accused as deemed necessary for a full and fair trial, including appointing interpreters.