

may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90-179, §1(5), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90-632, §2(10), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98-209, §§2(d), 3(c)(2), Dec. 6, 1983, 97 Stat. 1393, 1394.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                        |
|-----------------|--------------------|---|
| 827(a) .....    | 50:591(a).         | May 5, 1950, ch. 169, §1 (Art. 27), 64 Stat. 117. |
| 827(b) .....    | 50:591(b).         |   |
| 827(c) .....    | 50:591(c).         |   |

The words, “detail” and “detailed” are substituted for the words “appoint” and “appointed” throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word “and” is substituted for the words “together with”. The word “considers” is substituted for the word “deems”. The words “necessary or” are omitted as surplusage, since what is necessary is also appropriate. The word “may” is substituted for the word “shall”. The word “later” is substituted for the word “subsequently”.

In subsections (b) and (c), the word “must” is substituted for the word “shall”, since the clauses prescribe conditions and not commands.

In subsection (b), the word “for” is substituted for the words “in the case of”. The words “person \* \* \* a person who is” are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-209, §3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98-209, §3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted “assistant or associate defense counsel” for “assistant defense counsel”.

Subsec. (b)(1). Pub. L. 98-209, §2(d)(1), substituted “judge advocate” for “judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard.”

Subsec. (c)(3). Pub. L. 98-209, §2(d)(2), struck out “, or a law specialist,” after “is a judge advocate”.

1968—Subsec. (a). Pub. L. 90-632, §2(10)(A), substituted “military judge” for “law officer”.

Subsec. (c). Pub. L. 90-632, §2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98-209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

**§ 828. Art. 28. Detail or employment of reporters and interpreters**

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                        |
|-----------------|--------------------|---|
| 828 .....       | 50:592.            | May 5, 1950, ch. 169, §1 (Art. 28), 64 Stat. 117. |

The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The words, “detail or employ” are substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

**§ 829. Art. 29. Absent and additional members**

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b)(1) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below the applicable minimum number of members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of members. The trial may proceed with the new members present after the recorded evidence