

serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

(b) **DETAIL OF MEMBERS.**—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

(c) **EXCUSE OF MEMBERS.**—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948i, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may serve on military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

**§ 948j. Military judge of a military commission**

(a) **DETAIL OF MILITARY JUDGE.**—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which such military judge has been detailed.

(b) **ELIGIBILITY.**—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge of general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

(c) **INELIGIBILITY OF CERTAIN INDIVIDUALS.**—No person is eligible to act as military judge in a case of a military commission under this chapter if such person is the accuser or a witness or has acted as investigator or a counsel in the same case.

(d) **CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.**—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may such military judge vote with the members.

(e) **OTHER DUTIES.**—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as

are assigned to such officer by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

(f) **PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.**—The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2577.)

PRIOR PROVISIONS

A prior section 948j, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to military judges of military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

**§ 948k. Detail of trial counsel and defense counsel**

(a) **DETAIL OF COUNSEL GENERALLY.**—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

(b) **TRIAL COUNSEL.**—Subject to subsection (e), a trial counsel detailed for a military commission under this chapter shall be—

(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which such judge advocate is a member; or

(2) a civilian who is—

(A) a member of the bar of a Federal court or of the highest court of a State; and

(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

(c) **DEFENSE COUNSEL.**—(1) Subject to subsection (e), a military defense counsel detailed for a military commission under this chapter shall be a judge advocate (as so defined) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as defense counsel before general courts-mar-