

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-

tial by the Judge Advocate General of the armed force of which such judge advocate is a member.

(2) The Secretary of Defense shall prescribe regulations for the appointment and performance of defense counsel in capital cases under this chapter.

(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

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

#### PRIOR PROVISIONS

A prior section 948k, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to detail of trial counsel and defense counsel, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 948l. Detail or employment of reporters and interpreters

(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2578.)

#### PRIOR PROVISIONS

A prior section 948l, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2605, related to detail or employment of reporters and interpreters, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 948m. Number of members; excuse of members; absent and additional members

(a) NUMBER OF MEMBERS.—(1) Except as provided in paragraph (2), a military commission under this chapter shall have at least five members.

(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

- (1) as a result of challenge;
- (2) by the military judge for physical disability or other good cause; or
- (3) by order of the convening authority for good cause.

(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2579.)

#### PRIOR PROVISIONS

A prior section 948m, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to number of members, excuse of members, and absent and additional members of a military commission, prior to the general amendment of this chapter by Pub. L. 111-84.

#### SUBCHAPTER III—PRE-TRIAL PROCEDURE

Sec.	
948q.	Charges and specifications.
948r.	Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused.
948s.	Service of charges.

#### § 948q. Charges and specifications

(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

- (1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and
- (2) that such matters are true in fact to the best of the signer's knowledge and belief.

(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against the accused as soon as practicable.