

**§ 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-martial 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.)

**Editorial Notes**

**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.

**Statutory Notes and Related Subsidiaries**

**GRADE OF CHIEF PROSECUTOR AND CHIEF DEFENSE COUNSEL IN MILITARY COMMISSIONS ESTABLISHED TO TRY INDIVIDUALS DETAINED AT GUANTANAMO**

Pub. L. 113-66, div. A, title X, § 1037, Dec. 26, 2013, 127 Stat. 854, provided that:

“(a) **IN GENERAL.**—For purposes of any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba, the chief defense counsel and the chief prosecutor shall have the same grade (as that term is defined in section 101(b)(7) of such title).

“(b) **WAIVER.**—

“(1) **IN GENERAL.**—The Secretary of Defense may temporarily waive the requirement specified in subsection (a), if the Secretary determines that compliance with such subsection would—

“(A) be infeasible due to a non-availability of qualified officers of the same grade to fill the billets of chief defense counsel and chief prosecutor; or

“(B) cause a significant disruption to proceedings established under chapter 47A of title 10, United States Code.

“(2) **REPORTS.**—Not later than 30 days after the Secretary issues a waiver under paragraph (1), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the following:

“(A) A copy of the waiver and the determination of the Secretary to issue the waiver.

“(B) A statement of the basis for the determination, including an explanation of the non-availability of qualified officers or the significant disruption concerned.

“(C) Notice of the time period during which the waiver is in effect.

“(c) **GUIDANCE.**—Not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall issue guidance to ensure that the office of the chief defense counsel and the office of the chief prosecutor receive equitable resources, personnel support, and logistical support for conducting their respective duties in connection with any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba.”

**§ 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