

§ 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

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.)

Editorial Notes

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 primary members and as many alternate members as the convening authority shall detail. Alternate members shall be designated in the order in which they will replace an excused primary member.

(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 primary members prescribed by section 949m(c) of this title.

(b) PRIMARY MEMBERS.—Primary members of a military commission under this chapter are voting members.

(c) ALTERNATE MEMBERS.—(1) A military commission may include alternate members to replace primary members who are excused from service on the commission.

(2) Whenever a primary member is excused from service on the commission, an alternate member, if available, shall replace the excused primary member and the trial may proceed.

(d) EXCUSE OF MEMBERS.—No primary or alternate 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;

(3) by order of the convening authority for good cause; or

(4) in the case of an alternate member, in order to reduce the number of alternate members required for service on the commission, as determined by the convening authority.

(e) ABSENT AND ADDITIONAL MEMBERS.—Whenever the number of primary members of a mili-

tary commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members, 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. An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2579; amended Pub. L. 113-66, div. A, title X, §1031(a), Dec. 26, 2013, 127 Stat. 849.)

Editorial Notes

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.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113-66, §1031(a)(1)(A), substituted “at least five primary members and as many alternate members as the convening authority shall detail” for “at least five members” and inserted at end “Alternate members shall be designated in the order in which they will replace an excused primary member.”

Subsec. (a)(2). Pub. L. 113-66, §1031(a)(1)(B), inserted “primary” before “members”.

Subsecs. (b), (c). Pub. L. 113-66, §1031(a)(2)(B), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 113-66, §1031(a)(2)(A), (3), redesignated subsec. (b) as (d), inserted “primary or alternate” before “member” in introductory provisions, and added par. (4).

Subsec. (e). Pub. L. 113-66, §1031(a)(2)(A), (4), redesignated subsec. (c) as (e), substituted “Whenever the number of primary members of a military commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members” for “Whenever a military commission under this chapter is reduced below the number of members required by subsection (a)”, and inserted at end “An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.”

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