



Department of Defense

Military Commission Instruction No. 3

April 15, 2004

SUBJECT: Responsibilities of the Chief Prosecutor, Deputy Chief Prosecutor, Prosecutors, and Assistant Prosecutors

References:

- (a) Military Commission Order No. 1 (Mar. 21, 2002)
- (b) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001)
- (c) Section 113(d) of Title 10 of the United States Code
- (d) Section 140(b) of Title 10 of the United States Code
- (e) Military Commission Instruction No. 1, current edition
- (f) DoD Directive 5122.5, "Assistant Secretary of Defense for Public Affairs," current edition

1. PURPOSE

This Instruction establishes the responsibilities of the Office of the Chief Prosecutor (OCP) and components thereof.

2. AUTHORITY

This Instruction is issued pursuant to Section 7(A) of reference (a) and in accordance with references (b), (c), and (d). The provisions of reference (e) are applicable to this Instruction.

3. OFFICE OF THE CHIEF PROSECUTOR

A. *General.* The Office of the Chief Prosecutor shall be a component of the Office of Military Commissions (OMC) and shall be comprised of the Chief Prosecutor, Deputy Chief Prosecutor, Prosecutors, and other persons properly under the supervision of the Chief Prosecutor.

B. Chief Prosecutor.

- 1) The Chief Prosecutor shall be a judge advocate of any United States armed force and shall be designated by the General Counsel of the Department of Defense.
- 2) The Chief Prosecutor shall report directly to the Legal Advisor to the Appointing Authority and then to the Appointing Authority.
- 3) The Chief Prosecutor shall have authority to subpoena any individual to appear as a witness, to testify, or to produce any evidence in a case referred to military commissions or in a criminal investigation associated with a case that may be referred to a military commission.
- 4) The Chief Prosecutor shall direct the overall prosecution effort pursuant to references (a) and (b), ensuring proper supervision and management of all personnel and resources assigned to the Office of the Chief Prosecutor.
- 5) The Chief Prosecutor shall ensure that all personnel assigned to the Office of the Chief Prosecutor review, and attest that they understand and will comply with, references (a) and (b) and all Supplementary Regulations and Instructions issued in accordance therewith.
- 6) The Chief Prosecutor shall inform the Appointing Authority of all requirements for personnel, office space, equipment, and supplies to ensure the successful functioning and mission accomplishment of the Office of the Chief Prosecutor.
- 7) The Chief Prosecutor shall supervise all Prosecutors and other personnel assigned to the Office of the Chief Prosecutor including any special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States.
- 8) The Chief Prosecutor, or his designee, shall fulfill applicable performance evaluation requirements associated with Prosecutors and other personnel properly under the supervision of the Office of the Chief Prosecutor.
- 9) The Chief Prosecutor shall detail a Prosecutor and, as appropriate, one or more Assistant Prosecutors to perform the duties of the prosecution as set forth in Section 4(B)(2) of reference (a). The Chief Prosecutor may detail himself to perform such duties.
- 10) The Chief Prosecutor shall ensure that all Prosecutors and Assistant Prosecutors faithfully represent the United States in discharging their prosecutorial duties before military commissions conducted pursuant to references (a) and (b).
- 11) The Chief Prosecutor shall ensure that all Prosecutors and Assistant Prosecutors have taken an oath to perform their duties faithfully.
- 12) The Chief Prosecutor shall ensure that all personnel properly under the supervision of the Office of the Chief Prosecutor possess the appropriate security clearances.

C. *Deputy Chief Prosecutor.*

- 1) The Deputy Chief Prosecutor shall be a judge advocate of any United States armed force and shall be designated by the General Counsel of the Department of Defense.
- 2) The Deputy Chief Prosecutor shall have full authority to exercise the authority and perform the duties of the Chief Prosecutor in the absence of the Chief Prosecutor.

D. *Prosecutors.*

- 1) Prosecutors shall be detailed by the Chief Prosecutor and may be either judge advocates of any United States armed force or special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States.
- 2) Prosecutors shall represent the United States as Prosecutors or Assistant Prosecutors as directed by the Chief Prosecutor and in accordance with references (a) and (b).
- 3) Prosecutors shall fulfill all responsibilities detailed in references (a) and (b), those set forth in this Instruction, and those assigned by the Chief Prosecutor.
- 4) Prosecutors shall ensure that all court reporters, security personnel, and interpreters who are to perform duties in relation to a military commission proceeding have taken an oath to perform their duties faithfully. As directed by the Presiding Officer, Prosecutors also shall administer appropriate oaths to witnesses during military commission proceedings.

4. DUTIES AND RESPONSIBILITIES OF THE PROSECUTION

- A. *Regular Duties.* The Prosecution shall perform all duties specified or implied in reference (a) as responsibilities of the Prosecution.
- B. *Administrative Duties.* The Prosecution shall, as directed by the Presiding Officer or the Appointing Authority, prepare any documentation necessary to facilitate the conduct of military commissions proceedings. The Prosecution shall, as directed by the Legal Advisor to the Appointing Authority, prepare a trial guide to provide a standardized administrative plan for the conduct of military commission proceedings. Unless directed otherwise by the Appointing Authority, the Presiding Officer may, in his discretion, depart from this guide as appropriate.
- C. *Special Duties.* The Prosecution shall perform all other functions, consistent with references (a) and (b), as may be directed by the Appointing Authority or the General Counsel of the Department of Defense.

5. POLICIES

- A. *Prohibition on Prosecutors Serving as Defense Counsel.* Judge advocates assigned to the Office of the Chief Prosecutor shall be deemed unavailable for service as Defense Counsel under section 4(C)(3)(a) of reference (a).
- B. *Prohibition on Certain Disclosures.* All Prosecutors must strictly comply with section 6(D)(5) and section 9 of reference (a) to ensure they do not improperly disclose classified information, national security information, or state secrets to any person not specifically authorized to receive such information.
- C. *Statements To The Media.* Consistent with reference (f), the Assistant Secretary of Defense for Public Affairs shall serve as the sole release authority for DoD information and audiovisual materials regarding military commissions. Personnel assigned to the Office of the Chief Prosecutor may communicate with news media representatives regarding cases and other matters related to military commissions only when approved by the Appointing Authority or the General Counsel of the Department of Defense.

6. EFFECTIVE DATE

This Instruction is effective immediately.



William J. Haynes II
General Counsel of the Department of Defense