

Office of the Secretary of Defense

§ 15.3

commission of a future criminal act that I believe is likely to result in death or substantial bodily harm, or significant impairment of national security.

K. I understand and agree that nothing in this Affidavit and Agreement creates any substantive, procedural, or other rights for me as counsel or for my client(s).

/s/ _____
Print Name: _____
Address: _____
Date: _____

State of _____)
County of _____)

Sworn to and subscribed before me, by _____, this ____ day of _____, 20____.

Notary

My commission expires: _____

PART 15—REPORTING RELATIONSHIPS FOR MILITARY COMMISSION PERSONNEL

Sec.

15.1 Purpose.

15.2 Authority.

15.3 Policies and procedures.

AUTHORITY: 10 U.S.C. 113(d) and 140(b).

SOURCE: 68 FR 39395, July 1, 2003, unless otherwise noted.

§ 15.1 Purpose.

This part establishes supervisory and performance evaluation relationships for military commission personnel.

§ 15.2 Authority.

This part is issued pursuant to 32 CFR 9.7(a) and in accordance with Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," (3 CFR 2001 Comp., p. 918, 66 FR 57833) and 10 U.S.C. 113(d) and 140(b). The provisions of 32 CFR part 10 are applicable to this part.

§ 15.3 Policies and Procedures.

(a) *Supervisory and performance evaluation relationships.* Individuals appointed, assigned, detailed, designated or employed in a capacity related to the conduct of military commission proceedings conducted in accordance with 32 CFR part 9 and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," shall be subject to the rela-

tionships set forth in paragraphs (a)(1) through (a)(9) of this section. Unless stated otherwise, the person to whom an individual "reports," as set forth in paragraphs (a)(1) through (a)(9) of this section, shall be deemed to be such individual's supervisor and shall, to the extent possible, fulfill all performance evaluation responsibilities normally associated with the function of direct supervisor in accordance with the subordinate's Military Service performance evaluation regulations.

(1) **Appointing Authority:** Any Appointing Authority designated by the Secretary of Defense pursuant to 32 CFR part 9 shall report to the Secretary of Defense in accordance with 10 U.S.C. 113(d).

(2) **Legal Advisor to Appointing Authority:** The Legal Advisor to the Appointing Authority shall report to the Appointing Authority.

(3) **Chief Prosecutor:** The Chief Prosecutor shall report to the Deputy General Counsel (Legal Counsel) of the Department of Defense and then to the General Counsel of the Department of Defense.

(4) **Prosecutors and Assistant Prosecutors:** Prosecutors and Assistant Prosecutors shall report to the Chief Prosecutor and then to the Deputy General Counsel (Legal Counsel) of the Department of Defense.

(5) **Chief Defense Counsel:** The Chief Defense Counsel shall report to the Deputy General Counsel (Personnel and Health Policy) of the Department of Defense and then to the General Counsel of the Department of Defense.

(6) **Detailed Defense Counsel:** Detailed Defense Counsel shall report to the Chief Defense Counsel and then to the Deputy General Counsel (Personnel and Health Policy) of the Department of Defense.

(7) **Review Panel members:** Members of the Review Panel shall report to the Secretary of Defense.

(8) **Commission members:** Commission members shall continue to report to their parent commands. The consideration or evaluation of the performance of duty as a member of a military commission is prohibited in preparing effectiveness, fitness, or evaluation reports of a commission member.

(9) Other personnel: All other military commission personnel, such as court reporters, interpreters, security personnel, bailiffs, and clerks detailed or employed by the Appointing Authority pursuant to 32 CFR 9.4(d), if not assigned to the Office of the Chief Prosecutor or the Office of the Chief Defense Counsel, shall report to the Appointing Authority or his designee.

(b) *Responsibilities of supervisory/reporting officials.* Officials designated in this part as supervisory/reporting officials shall:

(1) Supervise subordinates in the performance of their duties.

(2) Prepare fitness or performance evaluation reports and, as appropriate, process awards and citations for subordinates. To the extent practicable, a reporting official shall comply with the rated subordinate's Military Service regulations regarding the preparation of fitness or performance evaluation reports and in executing related duties.

PART 16—SENTENCING

Sec.

16.1 Purpose.

16.2 Authority.

16.3 Available sentences.

16.4 Sentencing procedures.

AUTHORITY: 10 U.S.C. 113(d) and 140(b).

SOURCE: 68 FR 39396, July 1, 2003, unless otherwise noted.

§ 16.1 Purpose.

This part promulgates policy, assigns responsibilities, and prescribes procedures for matters related to sentencing of persons with regard to whom a finding of guilty is entered for an offense referred for trial by a military commission appointed pursuant to 32 CFR part 9 and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" (3 CFR 2001 Comp., p. 918, 66 FR 57833).

§ 16.2 Authority.

This part is issued pursuant to 32 CFR 9.7(a) and in accordance with Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," and 10 U.S.C. 113(d) and

140(b). The provisions of 32 CFR part 10 are applicable to this part.

§ 16.3 Available sentences.

(a) *General.* 32 CFR part 9 permits a military commission wide latitude in sentencing. Any lawful punishment or condition of punishment is authorized, including death, so long as the prerequisites detailed in 32 CFR part 9 are met. Detention associated with an individual's status as an enemy combatant shall not be considered to fulfill any term of imprisonment imposed by a military commission. The sentence determination should be made while bearing in mind that there are several principal reasons for a sentence given to those who violate the law. Such reasons include: punishment of the wrongdoer; protection of society from the wrongdoer; deterrence of the wrongdoer and those who know of his crimes and sentence from committing the same or similar offenses; and rehabilitation of the wrongdoer. In determining an appropriate sentence, the weight to be accorded any or all of these reasons rests solely within the discretion of commission members. All sentences should, however, be grounded in a recognition that military commissions are a function of the President's war-fighting role as Commander-in-Chief of the Armed Forces of the United States and of the broad deterrent impact associated with a sentence's effect on adherence to the laws and customs of war in general.

(b) *Conditions of imprisonment.* Decisions regarding the location designated for any imprisonment, the conditions under which a sentence to imprisonment is served, or the privileges accorded one during any period of imprisonment should generally not be made by the commission. Those decisions and actions, however, may be appropriate subjects for recommendation to the person making a final decision on the sentence in accordance with of 32 CFR 9.6(h).

(c) *Prospective recommendations for sentence modification.* A sentence imposed by military commission may be accompanied by a recommendation to suspend, remit, commute or otherwise modify the adjudged sentence in concert with one or more conditions upon