Department of Defense

Appointing Authority Regulation No. 3

November 17, 2004

SUBJECT: Professional Responsibility

References:
(a) 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)
(b) Department of Defense Directive 5105.70, "Appointing Authority for Military Commissions" (Feb. 10, 2004)
(c) Military Commission Order No. 1 (Mar. 21, 2002)
(d) Military Commission Instruction No. 1, current edition
(e) Section 898 of Title 10 of the United States Code

1. PURPOSE

This Regulation establishes policies for the ethical conduct of attorneys in connection with a proceeding before, during and after a trial by military commission pursuant to references (a) and (b).

2. AUTHORITY

This Regulation is issued pursuant to Section 6.3 of reference (b) and Section 7(A) of reference (c) and in accordance with reference (a). The provisions of references (c), (d), and (e) are applicable to this Regulation.

3. APPLICATION OF PROFESSIONAL RESPONSIBILITY RULES

A. *Generally*. In addition to State and branch specific armed forces Rules of Professional Conduct, compliance with all rules, regulations, and instructions applicable to trials by military commission convened pursuant to references (a) and (b) shall be deemed a professional responsibility obligation for the practice of law within the Department of Defense.

1) Failure to adhere to the rules, regulations, and instructions applicable to trials by military commission may be subject to appropriate action by the Appointing Authority for Military Commissions, the General Counsel of the Department of Defense or the Presiding Officer of a military commission.

2) Such action may include permanently barring an individual from participating in any military commission proceeding convened pursuant to references (a) and (b), punitive measures imposed under reference (d), and any other lawful sanction.

B. *Violations of the Rules of Other Jurisdictions.* If the conduct of covered attorneys appears to be in violation of the branch specific armed forces Rules of Professional Conduct or rules of other jurisdictions that regulate the professional conduct of attorneys, the Legal Advisor to the Appointing Authority for Military Commissions shall forward information concerning those instances to The Judge Advocate General of the appropriate armed force or the appropriate officials of other jurisdictions for appropriate action.

C. *Conflicts.* If a conflict exists between the rules, regulations, and instructions applicable to trials by military commission and the branch specific armed forces Rules of Professional Conduct or rules of other jurisdictions that regulate the professional conduct of attorneys, the Appointing Authority for Military Commissions or the Presiding Officer of a military commission shall apply the rules, regulations, and instructions applicable to trials by military commission only after the Legal Advisor to the Appointing Authority for Military Commissions coordinates with The Judge Advocate General of the appropriate armed force or the appropriate officials of other jurisdictions.

4. EFFECTIVE DATE

This Regulation is effective immediately.

John D. Altenburg, Jr.
Appointing Authority for
Military Commissions