

Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

#### List of Subjects in 32 CFR part 14

Military law.

■ Accordingly, 32 CFR part 14 is added to Subtitle A, Chapter I, Subchapter B to read as follows:

#### PART 14—QUALIFICATION OF CIVILIAN DEFENSE COUNSEL

Sec.

14.1 Purpose.

14.2 Authority.

14.3 Policies and procedures.

Appendix A to Part 14—United States of America Authorization for Release of Information

Appendix B to Part 14—Affidavit and Agreement by Civilian Defense Counsel

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

##### § 14.1 Purpose.

This part establishes policies and procedures for the creation and management of the pool of qualified Civilian Defense Counsel authorized in 32 CFR 9.4 (c)(3)(ii) 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., 918, 66 FR 57833).

##### § 14.2 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.

##### § 14.3 Policies and procedures.

(a) *Application procedures.* (1) Civilian attorneys may be prequalified as members of the pool of attorneys eligible to represent Accused before military commissions at no expense to the United States if, at the time of application, they meet the eligibility criteria set forth in 32 CFR 9.4(c)(3)(ii) as further detailed in this part, or they may be qualified on an ad hoc basis after being requested by an Accused. In both cases, qualification results in membership in the pool of available Civilian Defense Counsel.

(2) An attorney seeking qualification as a member of the pool of available Civilian Defense Counsel shall submit an application, by letter, to: Office of the General Counsel, Department of

Defense, (Attn: Chief Defense Counsel, Office of Military Commissions), 1600 Defense Pentagon, Washington, DC 20301–1600. Applications will be comprised of the letter requesting qualification for membership, together with the following documents that demonstrate satisfaction of the criteria set forth in 32 CFR 9.4(c)(3)(ii):

(i) Civilian Defense Counsel shall be United States citizens (32 CFR 9.4(c)(3)(ii)(A)). Applicants will provide proof of citizenship (e.g., certified true copy of passport, birth certificate, or certificate of naturalization).

(ii) Civilian Defense Counsel shall be admitted to the practice of law in a State, district, territory or possession of the United States, or before a Federal court (32 CFR 9.4(c)(3)(ii)(B)). Applicants will submit an official certificate showing that the applicant is an active member in good standing with the bar of a qualifying jurisdiction. The certificate must be dated within three months of the date of the Chief Defense Counsel's receipt of the application.

(iii) Civilian Defense Counsel shall not have been the subject of any sanction or disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct (32 CFR 9.4(c)(2)(iii)).

(A) An applicant shall submit a statement detailing all sanctions or disciplinary actions, pending or final, to which he has been subject, whether by a court, bar or other competent governmental authority, for misconduct of any kind. The statement shall identify the jurisdiction or authority that imposed the sanction or disciplinary action, together with any explanation deemed appropriate by the applicant. Additionally, the statement shall identify and explain any formal challenge to the attorney's fitness to practice law, regardless of the outcome of any subsequent proceedings. In the event that no sanction, disciplinary action or challenge has been imposed on or made against an applicant, the statement shall so state. Further, the applicant's statement shall identify each jurisdiction in which he has been admitted or to which he has applied to practice law, regardless of whether the applicant maintains a current active license in that jurisdiction, together with any dates of admission to or rejection by each such jurisdiction and, if no longer active, the date of and basis for inactivation. The information shall be submitted either in the form of a sworn notarized statement or as a declaration under penalty of perjury of the laws of the United States. The sworn statement or declaration must be executed and dated within three months

of the date of the Chief Defense Counsel's receipt of the application.

(B) Further, applicants shall submit a properly executed Authorization for Release of Information (Appendix A to this part), authorizing the Chief Defense Counsel or his designee to obtain information relevant to qualification of the applicant as a member of the Civilian Defense Counsel pool from each jurisdiction in which the applicant has been admitted or to which he has applied to practice law.

(iv) Civilian Defense Counsel shall be determined to be eligible for access to information classified at the level SECRET or higher under the authority of and in accordance with the procedures described in Department of Defense Regulation, DoD 5200.2–R, "Personnel Security Program." <sup>1</sup> (32 CFR 9.4(c)(2)(iv))

(A) Civilian Defense Counsel applicants who possess a valid current security clearance of SECRET or higher shall provide, in writing, the date of their background investigation, the date such clearance was granted, the level of the clearance, and the adjudicating authority.

(B) Civilian Defense Counsel applicants who do not possess a valid current security clearance of SECRET or higher shall state in writing their willingness to submit to a background investigation in accordance with DoD 5200.2–R and to pay any actual costs associated with the processing of the same. The security clearance application, investigation, and adjudication process will not be initiated until the applicant has submitted an application that otherwise fully complies with this part and the Chief Defense Counsel has determined that the applicant would otherwise be qualified for membership in the Civilian Defense Counsel pool. Favorable adjudication of the applicant's personnel security investigation must be completed before an applicant will be qualified for membership in the pool of Civilian Defense Counsel. The Chief Defense Counsel may, at his discretion, withhold qualification and wait to initiate the security clearance process until such time as the Civilian Defense Counsel's services are likely to be sought.

(v) Civilian Defense Counsel shall have signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the course of proceedings (32 CFR 9.4(c)(2)(v)). This requirement shall be satisfied by the execution of the

<sup>1</sup> Available at <http://www.dtic.mil/whs/directives>.