

UNCLASSIFIED//FOR PUBLIC RELEASE
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

ABD AL HADI AL IRAQI

DECLARATION OF
BRIGADIER GENERAL JOHN G. BAKER

21 September 2015

I, Brigadier General John G. Baker hereby declare and state:

1. I am the Chief Defense Counsel for Military Commissions.
2. As the Chief Defense Counsel, I am the only person authorized under Regulation for Trial by Military Commission (2011) para 9-1a4 and 9-1a5 and Rule for Military Commission 503(c) to detail judge advocates or qualified civilian attorneys performing duties with the Military Commissions Defense Organization to perform duties, as set forth in RMC 502(d)(7), as defense counsel or assistant defense counsel.
3. As the sole detailing authority, I am the only person authorized under RMC 505 to excuse a counsel detailed under RTCM 9-1a and RMC 503(c).¹
4. I have read the AE 49 filings, to include AE 49I, which directed defense counsel to notify Mr. Hadi al Iraqi of the Commission's ruling related to LtCol Gleason and to inform the Commission of Mr. Hadi al Iraqi's desire regarding the representational duties of LtCol Jasper and MAJ Stirk.
5. Since the Commission issued AE 49I, which defense counsel provided to Mr. Hadi al Iraqi, I have had several communications with Mr. al Iraqi concerning his rights to counsel.²

¹ While a military judge has the authority to disqualify a counsel under RMC 901, a military judge does not have the authority to excuse a counsel under RMC 505. In the normal course of things, a military judge's finding that a counsel is disqualified will provide the detailing authority justification to excuse that counsel under RMC 505(d)(2)(B)(ii).

² Absent a court order, I do not intend to disclose the contents of those communications to the Commission.

6. On 09 Sep 15, LtCol Jasper notified me that Mr. Hadi al Iraqi would not meet with him when he travelled to Cuba to discuss AE 49I.
7. On 11 Sep 15, I decided to utilize the very recently vacated GS-15 billet, that had been filled by Mr. Billy Little as the Deputy Chief Defense Counsel,³ to hire a qualified civilian attorney who would perform duties with the Military Commission Defense Organization as a trial attorney and, upon hiring, to detail that qualified civilian attorney, under RMC 503 to represent Mr. Hadi al Iraqi.⁴
8. To begin the process of locating a qualified civilian attorney performing duties with the MCDO to detail to represent Mr. Hadi al Iraqi under RMC 503, CAPT Brent Filbert, Deputy Chief Defense Counsel, notified the convening authority's office on 11 Sep 15 of my decision to hire another trial attorney vice a civilian Deputy Chief Defense Counsel.
9. On 17 Sep 15, the convening authority's office provided CAPT Filbert the paperwork necessary to post the trial attorney billet on USAJOBS or offered, as an alternative, to initiate a Person of Interest (POI) hiring action.⁵
10. On 19 Sep 15, I met with Mr. Hadi al Iraqi to discuss his rights to counsel under RMC 506 and my authority to detail counsel under RTMC 9-1a and RMC 3(c) 502(d)(7) and to excuse counsel under RMC 505(d)(2)(B)(i). Mr. Hadi al Iraqi did not desire to meet with either LtCol Jasper or MAJ Stirk on 19 Sep 15.
11. Mr. Hadi al Iraqi has agreed to meet with me again at the ELC, prior to going on the record, to make a final decision whether he would like to request that I utilize my sole authority under RMC 505 to excuse any or all of his counsel detailed under RTCM 9-1a and RMC 503(c). Following that discussion, Mr. Hadi al Iraqi will be prepared to discuss his rights to counsel with the Commission.

I declare under penalty of perjury under the laws of the United States of America that, pursuant to my knowledge and belief, the foregoing is true and correct.

Executed on: 21 September 2015
U.S. Naval Station, Guantanamo Bay, Cuba

BAKER.JOHN.GRAHAM
HAM [REDACTED]

Digitally signed by
BAKER JOHN GRAHAM
DN: c = US, o = U.S. Government ou = DoD
ou = PDI ou = USMC
cn = BAKER JOHN GRAHAM
Date: 2015.09.21 13:10:52 -0400

J. G. Baker
BGen, U. S. Marine Corps
Chief Defense Counsel

³ Mr. Little's last day with the MCDO was 4 Sep 15.

⁴ Mr. Hadi al Iraqi will not be the first accused to be detailed a qualified civilian attorney performing duties with the MCDO under RTCM 9-1 and RMC 503(c).

⁵ A POI hire is essentially a by-name hire. To date, the MCDO has used the POI process to hire all qualified civilian attorneys to performing duties with the MCDO.