

## **Position Announcement – Learned Counsel for 9/11 Conspiracy Case Accused**

The Military Commissions Defense Organization (MCDO) invites applications for the position of “learned counsel” representing Mr. Ramzi Bin al Shibh in *United States v. Mohammad, et al.* (a.k.a. “The 9/11 case”), a capital case currently in pretrial proceedings in a Guantanamo Bay military commission. The need for a learned counsel has arisen because Mr. Bin al Shibh’s current learned counsel has been forced to withdraw for health reasons. To receive consideration, applicants should be exceptionally skilled and experienced in the defense of capital cases, preferably federal and/or complex multi-defendant cases. Further, the applicant must be available to begin to work on this case in a full-time capacity almost immediately. Applicants must also be eligible to receive a Top Secret security clearance (a current security clearance is not required).

Given that MCDO offices are located in Arlington, Virginia and the applicant will be expected to spend considerable time in Arlington, strong consideration will be given to applicants who are willing to relocate to the DC area or are located such that regular travel to and from the DC area can be accomplished easily.

Time is of the essence, so if interested please submit a c.v.; cover letter; two writing samples on capital issues; proof of US citizenship (*e.g.* certified true copy of passport, birth certificate, or certificate of naturalization); a certificate of good standing; a statement detailing any sanctions or disciplinary action, pending or final, to which the applicant has been subject, whether by a court, bar, or other competent government authority, for misconduct of any kind; a statement expressing willingness to submit to a background investigation; and references as soon as possible via e-mail to **Mr. Ralph Rivera, ralph.rivera14.civ@mail.mil**. Applications will be reviewed and considered on a rolling basis with the intent to have a final selection made no later than 15 April 2020. Applicants receiving final consideration will be provided an Affidavit and Agreement by Civilian Defense Counsel (Regulation for Trial by Military Commission Form 9-2) and other documentation required to become a member of the military commission Civilian Counsel Pool. This form and additional information must be returned in a timely fashion in order to be eligible to be selected for this position.

### **Background**

The 9/11 case is a joint prosecution of five accused. It is as challenging to defend as any criminal case in United States history. Apart from the notoriety of the crime, the accused are all non-citizens with varying degrees of proficiency in English, who were held incommunicado and tortured for years by the United States government before being brought to trial. The scope of the required investigation, both guilt/innocence and mitigation, is international and to date has required defense team travel to various overseas locations. Because the clients are detained and all proceedings are being conducted at Naval Station Guantanamo Bay (NSGB), regular – usually monthly – travel to Guantanamo is required. The quantity of classified information involved in the case is unprecedented and has significantly slowed and complicated the proceedings. The arraignment in this case took place in 2012 and the case is scheduled to go to trial in January 2021.

In his oral ruling approving the excusal of the current learned counsel, the military judge provided that the excusal will not become effective until new learned counsel is appointed. The military judge recognized the difficulty for a new learned counsel stepping into this role so close to trial in a case of this magnitude and signaled a willingness to consider severance, either by motion of a party or *sua sponte*. The military judge has ordered Mr. Bin al Shibh's defense team, as the first order of business for the new learned counsel, to file a transition plan to include estimates of how long the new learned counsel will need to prepare for trial, get caught up on the history of the case, as well as develop a trial strategy. To assist with this transition, Mr. Bin al Shibh's current learned counsel will remain funded as an advisor to his replacement for a reasonable period of time. To review a transcript of the military judge's oral ruling, please see Feb 19, 2020 Transcript, pp 32818-32842, [www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS19Feb2020-MERGED\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS19Feb2020-MERGED).pdf)

With this timeline, the applicant must be available to begin to work on this case full-time almost immediately.

#### Minimum experience

- Significant experience as lead counsel representing defendants in complex capital cases, including trying, as lead counsel, at least two capital cases through to sentencing verdict.

#### Helpful experience

- Experience with foreign non-English-speaking clients.
- Experience with overseas investigation.
- Experience as a replacement counsel in a capital case.
- Experience leading large, multidisciplinary capital defense teams.
- Experience with classified discovery and evidence.
- Experience with clients who have been subjected to torture.
- Experience with or knowledge of the regular military justice (courts-martial) system.
- Familiarity with international law generally and the law of war in particular.

#### Terms and compensation

By regulation, military commission learned counsel are compensated at the current hourly rate applicable to federally-appointed learned counsel, which is currently \$195/hour. To date, the Convening Authority has routinely authorized 2000 hours of work for each learned counsel at the outset of each contract year and has authorized additional hours when requested. We expect the need for appointed learned counsel to continue for a minimum of two years. Travel, including airfare, lodging and meals, is compensated at the federal per diem rates based upon location.