

Local Lawyer Cleared for Guantanamo Work

Attorney Greg Rinckey, a former JAG officer, is among a small group of lawyers who have been approved to serve as civilian defense counsel to detainees at Guantanamo Bay.

The recognition by the Department of Defense — only about 20 civilian defense attorneys in the U.S. were selected — was announced last week, but it's uncertain when or if Rinckey will take on the assignment, given President-elect Barack Obama's desire to close the detention center at the Navy base in Cuba.

It was reported this week that Obama would prepare an executive order during his first week in office — he will be sworn in Tuesday — that would start the process of relocating an estimated 250 al-Qaida and Taliban prisoners and potential witnesses held at the base known as Gitmo

Rinckey, 35, of Delmar, underwent a thorough approval process and obtained a high security clearance. As an attorney with the Army Judge Advocate General's Corps from 1999 until 2004, Rinckey, who left military service as a captain, was stationed at Army posts throughout the country and in Washington, D.C., and served as both a defense counsel and a prosecutor at courts-martial.

To qualify, an attorney must understand military law and not many lawyers do, Rinckey said. Also "how many people want to go down to Guantanamo Bay, Cuba?" he quipped.

If military tribunals are held in Guantanamo Bay, it's possible he could represent more than one detainee. But he noted that the situation is up in the air because of Obama's pledge to close down Guantanamo Bay.

If the detainees are transferred to federal prisons within the United States — there is no indication how long that could take or if that is where they would go — they could be tried in federal court and federal public defenders could be assigned to represent them, Rinckey said.

He has his own notions on the detainee situation. One bone of contention, he said, is "the government is blocking a lot of evidence, saying it affects national security and won't turn it over."

"It's an outrage how these detainees or unlawful combatants, as some have been deemed, have been held," Rinckey said. "It's setting a precedent that could come back and haunt American service members who could be captured in future conflicts."

"Every judge advocate general of all the armed forces has had issues with the handling of these detainees at Guantanamo Bay for that reason," Rinckey said. He fears that other countries could declare U.S. personnel unlawful combatants and hold them for extended periods.

"There needs to be due process," he said.

Standards set by the Geneva Conventions don't apply because "this isn't a war between two

or more states," he said, since al-Qaida is not a state. "Even if the Geneva Conventions don't apply, due process does."

A military commission, which would be conducted at Gitmo, "is a type of military court designed to try members of enemy forces during wartime and operates outside the scope of conventional criminal and civil proceedings," said Rinckey, the managing partner of the Albany firm of Tully Rinckey. Defendants are allowed the option of civilian attorney representation in addition to the military defense counsel assigned to them by the government, he said.