

Chief Guantánamo Prosecutor Retiring Before Sept. 11 Trial Begins

Army Brig. Gen. Mark Martins had held the job longest, and was for many years the public face of military commissions.

By Carol Rosenberg

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WASHINGTON — The Army general who has led war crimes prosecutions at Guantánamo Bay, Cuba, for a decade is retiring and handing off the trial of the five men accused of conspiring in the attacks of Sept. 11, 2001 to an as-yet unchosen successor.

Brig. Gen. Mark S. Martins of the Army served as chief prosecutor for military commissions throughout the Obama and Trump administrations.

His decision to step down came as a surprise because he had obtained an extension to serve in the post until Jan. 1, 2023. Instead, he will retire on Sept. 30, according to a notice sent by Karen V. Loftus, a prosecution staff member, to families of the nearly 3,000 people killed in the Sept. 11 attacks.

General Martins, a Harvard Law School-educated West Point graduate, had for many years served as the public face of military commissions. In his first years in the position, he undertook a speaking campaign to promote the hybrid form of justice that the Bush administration established after the invasion of Afghanistan.

The Obama administration made some changes to the system and decided to pursue the Sept. 11 case against Khalid Shaikh Mohammed and four accused accomplices at Guantánamo, rather than in federal court. A death-penalty case, it has been mired in pretrial proceedings since arraignment in May 2012 as the sides address questions related to the torture of the defendants in C.I.A. prisons before their 2006 transfers to Guantánamo Bay, among other issues.

Although the case currently has no military judge assigned to hear it, Pentagon officials are preparing for its first hearings since February 2020 to take place in the first two weeks of September, coinciding with the 20th anniversary of the attack.

General Martins submitted his retirement papers on Wednesday after repeatedly butting heads with Biden administration lawyers over positions his office had taken on the applicable international law and the Convention Against Torture at the Guantánamo court, according to senior government officials with knowledge of the disputes. General Martins did not respond to a request for comment.

A key point of contention was a recent decision by General Martins to use a statement that a man accused of orchestrating the U.S.S. Cole bombing in 2000 had made to the C.I.A. while being tortured to make a point with the military judge presiding in that case, which is also a death-penalty prosecution. Defense lawyers for the prisoner, Abd al-Rahim al-Nashiri of Saudi Arabia, are appealing the admissibility of that evidence.

On the same day General Martins chose to retire, he filed a brief asking the U.S. Court of Military Commission Review for extra time to respond to the appeal.

“Was he asked to resign or did he quit in protest?,” said Navy Capt. Brian L. Mizer, Mr. Nashiri’s lead military defense lawyer. “I don’t know.”

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Ms. Loftus said General Martins chose to retire “in the best interests of the ongoing cases.” Military Commissions hearings are scheduled to resume next week for the first time since the beginning of the pandemic, in a case accusing an Iraqi man of commanding forces that committed war crimes in Afghanistan in 2003 and 2004.

Ms. Loftus called the timing “an ideal window to identify a successor” because proceedings are “finally in view again for all of our cases following the pandemic-driven hiatus.”

General Martins cut an impressive figure in court at 6 feet 3 inches tall and a chest full of medals on his blue Army uniform. A former Rhodes scholar, he had made meeting with and briefing the families of the victims a key part of his duties, and had developed ties with some of them through social opportunities at Guantánamo Bay. He had repeatedly obtained extensions on the assignment in his effort to see the Sept. 11 case to trial.

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“My first thought is that the only continuity left is the defendants and the family members,” said Joel Shapiro, whose wife Sareve Dukat was killed at the World Trade Center and who has since worked as a guide at the 9/11 Memorial & Museum in New York. “Virtually everyone else who has been involved in this case has taken the opportunity to get on with their lives.”

“I was shocked that Mark is stepping down,” said Adele Welty, whose firefighter son Timothy was killed on 9/11. “I thought he was very committed to seeing it through. But who can blame him? The entire enterprise in Guantánamo is almost comical in its ridiculous turns of events — judge after judge quitting, and now General Martins.”

The chief defense counsel, Brig. Gen. John G. Baker of the Marines, is leaving his post on Nov. 1. The process of replacing him with a new military lawyer with a one-star rank — to give him parity with General Martins — was already underway, with a potential candidate chosen.

Defense officials said a board was likely to be assembled to select a new chief prosecutor, who may be the rank equivalent of an Army colonel rather than the rank of a one-star general. In the interim, Ms. Loftus said, General Martins's civilian deputy, Michael J. O'Sullivan, will serve as acting chief prosecutor.