

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

Frank D. WUTERICH )  
Staff Sergeant (E-6) ) ANSWER TO APPELLANT'S WRIT  
United States Marine Corps, ) APPEAL PETITION  
Appellant ) Crim.App. Dkt. No. 200800183  
v. )  
UNited STATES ) USCA Misc Dkt. No. 11-8009/MC  
Appellee )

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES:

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**INDEX OF BRIEF**

**Page**

Table of Authorities.....iv

Preamble.....1

I. History of the Case.....1

Jurisdictional Statement.....3

II. Issue Presented.....3

III. Statement of Facts.....4

IV. Reasons Why the Writ Should Not Issue.....8

HERE, (1) RELIEF CAN BE HAD DURING THE ORDINARY COURSE OF APPEAL, AND (2) APPELLANT DOES NOT DEMONSTRATE THAT THE MILITARY JUDGE'S REJECTION OF THE APPLICABILITY OF *HUTCHINS* TO THIS CASE, OR HIS DISQUALIFICATION OF MR. VOKEY FOR A CONFLICT OF INTEREST, IS A CLEAR ABUSE OF DISCRETION OR A JUDICIAL USURPATION OF POWER. THUS, APPELLANT FAILS TO DEMONSTRATE BOTH THAT RELIEF CANNOT BE HAD WITHOUT RESORT TO EXTRAORDINARY RELIEF, AND THAT HE HAS A CLEAR AND INDISPUTABLE RIGHT TO THE RELIEF HE REQUESTS.

- A. Appellant fails to demonstrate he has exhausted his administrative remedies by requesting that Mr. Vokey seek a return to active duty and termination of his employment with the conflicting firm.....11
  
- B. Appellant fails to demonstrate that the ordinary course of appeal will not resolve this issue. On direct review, the distinctions between this case and *Hutchins* permit testing for prejudice. The application of Article 27 and R.C.M. 505(d)(2)(B) support the change of detailed defense counsel by the designated detailing authority, and the later *sua sponte* disqualification of Mr. Vokey for conflict of interest.....12

C.	<u>Appellant fails to demonstrate an indisputable right to the relief requested.....</u>	13
1.	<u>Appellant invited this error by endorsing the appointment of substitute defense counsel and accepting Mr. Vokey's services as civilian defense counsel for two years post-retirement and substitution.....</u>	13
2.	<u>The Military Judge properly enunciated the inapplicability of <i>Hutchins</i> to Appellant's case, given (a) Appellant' failure to point to any misadvice as to his rights to counsel under Articles 27 or 38, thus permitting Appellant's case to be tested for prejudice, and (b) Mr. Vokey's service to Appellant for two-years post-retirement.....</u>	16
3.	<u>Finally, even absent the lower court's <i>Hutchins</i> precedent, (a) "continuity to counsel" under the Code exceeds any Federal right in that protects continuous effective representation regardless of indigence, not continuous representation by the same person; (b) "good cause" has historically permitted changes of detailed defense counsel by the designated detailing authority for military exigencies and extraordinary circumstances including retirement, resignation, sickness of self or relatives, and deployment; and, (c) absent unlawful command influence, strategic-level military manpower decisions must not be controlled by trial courts.....</u>	19
	Conclusion.....	27
	Certificate of Service.....	29

**TABLE OF AUTHORITIES**

**Cases**

<b>Supreme Court</b>	<b>Page</b>
<i>Bankers Life &amp; Casualty Co. v. Holland</i> , 346 U.S. 379 (1953).....	8, 10
<i>Chappell v. Wallace</i> , 462 U.S. 296 (1983).....	24
<i>Clinton v. Goldsmith</i> , 526 U.S. 529 (1999).....	9-10
<i>De Beers Consol. Mines, Ltd. v. United States</i> , 325 U.S. 212 (1945).....	10
<i>Flanagan v. United States</i> , 465 U.S. 259 (1984).....	12
<i>Heckler v. Ringer</i> , 466 U.S. 602 (1984).....	10
<i>La Buy v. Howes Leather Co.</i> , 352 U.S. 249 (1957).....	10
<i>Orloff v. Willoughby</i> , 345 U.S. 83 (1953).....	24
<i>Parr v. United States</i> , 351 U.S. 513 (1956).....	8
<i>Pennsylvania Bureau of Correction v. U.S. Marshals</i> , 474 U.S. 34 (1985).....	9
<i>Roche v. Evaporated Milk Ass'n</i> , 319 U.S. 21 (1943).....	8
<i>Schlagenhauf v. Holder</i> , 379 U.S. 104 (1964).....	8
<i>United States v. Chapman</i> , 386 U.S. 18 (1967).....	27
<i>United States v. Lane</i> , 474 U.S. 438 (1986).....	27
<i>United States v. Wells</i> , 519 U.S. 482 (1997).....	13

**Federal Courts of Appeals**

<i>Ridge v. Cessna Aircraft Co.</i> , 117 F.3d 126 (4th Cir. 1997)....	14
--	----

**Court of Appeals for the Armed Forces**

<i>Dettinger v. United States</i> , 7 M.J. 216 (C.M.A. 1979).....	10
<i>Gray v. Mahoney</i> , 39 M.J. 299 (C.M.A. 1994).....	9
<i>United States v. Caputo</i> , 18 M.J. 259 (C.M.A. 1984).....	24
<i>United States v. Curtis</i> , 44 M.J. 106 (C.A.A.F. 1996).....	19
<i>United States v. Frischholz</i> , 16 C.M.A. 150 (C.M.A. 1966).....	9
<i>United States v. Goode</i> , 1 M.J. 3 (C.M.A. 1985).....	18
<i>United States v. Iverson</i> , 5 M.J. 330 (C.M.A. 1978).....	19-20, 22
<i>United States v. Labella</i> , 15 M.J. 228 (C.M.A. 1983).....	8-9
<i>United States v. Loving</i> , 41 M.J. 213 (C.A.A.F. 1994).....	19-20
<i>United States v. Massey</i> , 14 C.M.A. 486 (C.M.A. 1964).....	25
<i>United States v. McCoy</i> , 31 M.J. 323 (C.M.A. 1990).....	27
<i>United States v. Snyder</i> , 18 C.M.A. 480 (C.M.A. 1969).....	9
<i>United States v. Strother</i> , 60 M.J. 476 (C.A.A.F. 2005).....	12

**Military Courts of Criminal Appeals**

*McKinney v. Jarvis*, 46 M.J. 870 (Army Ct. Crim. App. 1997)....10  
*United States v. Dahood*, 32 M.J. 852 (N.M.C.M.R. 1991).....21  
*United States v. Garcia*, 68 M.J. 561 (C. G. Ct. Crim. App. 2009).....22  
*United States v. Harris*, 8 M.J. 668 (A.C.M.R. 1979).....21  
*United States v. Hultgren*, 40 M.J. 638 (N.M.C.M.R. 1994)...21-22  
*United States v. Hutchins*, 68 M.J. 623 (N-M. Ct. Crim. App. 2010).....*passim*  
*United States v. Jones*, 4 M.J. 545 (A.C.M.R. 1977).....21  
*United States v. Lolagne*, 11 M.J. 556 (A.C.M.R. 1981).....21  
*United States v. Miller*, 41 M.J. 647 (N-M. Ct. Crim. App. 1994).....21  
*United States v. Polk*, 27 M.J. 812 (A.F.C.M.R. 1988).....21

**Statutes and Rules**

**Uniform Code of Military Justice**

Article 27.....*passim*  
Article 38.....16,20,26  
Article 59(a).....12,26  
Paragraph 37a (1969 ed.).....20,26

**Rules for Courts-Martial**

R.C.M. 505(d) (2) (B).....*passim*  
R.C.M. 505(f).....24-25  
R.C.M. 506(c).....23,25

**Other Authorities**

Analysis to Chapter 8, Paragraphs 37b and 39e, UCMJ (1969 ed.).....26  
Manual of the Judge Advocate General (JAGMAN), JAGINST 5800.7E w/ch 1-2, paragraph 0130(b).....23  
SECNAVINST 5430.27B, para. 4.a (Dec. 22, 1995).....23