

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

Frank D. WUTERICH) GOVERNMENT SUPPLEMENTAL ANSWER
Staff Sergeant (E-6))
U.S. Marine Corps,) Crim.App. Misc. Dkt. No. 200800183
Appellant)
) USCA Dkt. No. 11-8009/MC
v.)
)
United States,)
Appellee)

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

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WHERE THE ACCUSED'S DETAILED MILITARY DEFENSE COUNSEL: (1) SEEKS TO REMAIN ON ACTIVE DUTY TO CONTINUE REPRESENTING THE ACCUSED IN A HOMICIDE CASE; (2) IS INFORMED BY THE DEPUTY DIRECTOR OF HEADQUARTERS MARINE CORPS' MANPOWER SECTION THAT HE WILL NOT BE EXTENDED FURTHER; (3) TERMINATES HIS STATUS AS DETAILED DEFENSE WITHOUT AUTHORIZATION FROM EITHER THE ACCUSED OR ANY COURT; AND (4) ACCEPTS CIVILIAN EMPLOYMENT THAT CREATES AN IMPUTED CONFLICT ULTIMATELY LEADING A MILITARY JUDGE TO SEVER HIS ATTORNEY-CLIENT RELATIONSHIP WITH THE ACCUSED, HAS THE ACCUSED'S RIGHT TO THE CONTINUATION OF AN ESTABLISHED ATTORNEY-CLIENT RELATIONSHIP BEEN VIOLATED?

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APPELLANT DOES NOT DEMONSTRATE THAT THE MILITARY JUDGE'S DISQUALIFICATION OF MR. VOKEY FOR A CONFLICT OF INTEREST IS A CLEAR ABUSE OF DISCRETION OR A JUDICIAL USURPATION OF POWER. THUS, APPELLANT FAILS BOTH 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.....14

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3. Even if a severance occurred between August 2008 and March 2009, Appellant cannot demonstrate an indisputable right to relief based on prejudice.....17

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1. This case, like *Hutchins*, involves no intentional interference by the Government with the attorney-client relationship, and no Government denial of a request by the defense to continue as counsel.....20

2. Although the Government initially believed that Appellant should first request Mr. Vokey to voluntarily return to military active duty, the conflict that exists while Mr. Vokey works at his firm would travel with him should be called to active duty. Appellant cannot demonstrate an indisputable right to relief based on an abuse of discretion by the Military Judge in finding a conflict of interest that necessitated excusing Mr. Vokey from this case.....22

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