

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Petitioner

**BRIEF ON BEHALF OF
PETITIONER REGARDING
SPECIFIED ISSUES**

v.

Case No. ARMY Misc. 20250096

Lieutenant Colonel (O-5)
JONES, PAMELA L.,
Military Judge,
Respondent

Sergeant First Class (SFC)
STARR, BRYAN D.,
U.S. Army
Real Party in Interest

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

Specified Issue:

**DOES THE OFFICE OF THE SPECIAL TRIAL
COUNSEL HAVE AUTHORITY OR STANDING TO
FILE ON BEHALF OF AND REPRESENT THE
UNITED STATES BEFORE THE ARMY COURT
OF CRIMINAL APPEALS ON PETITION FOR AN
EXTRAORDINARY WRIT?**

Statement of the Case

On 22 January 2024, the United States preferred charges against Sergeant First Class [SFC] Bryan D. Starr. (Charge Sheet). On 12 December 2024, the military judge issued a ruling on defense's motion ordering the case be returned to

the special court-martial convening authority for action. (App. Ex. LXXXVIII). On 15 December 2024, the government filed a motion to reconsider the military judge's ruling ordering the case returned to the "preliminary hearing officer convening authority." (App. Ex. LXXXI). On 24 February 2025, the military judge issued a written ruling denying the government's request for reconsideration. (App. Ex. XC). On 7 March 2025, the government filed a Petition for Extraordinary Relief in the Nature of a Writ of Prohibition and a Request for a Stay of Proceedings. (Pet. Request). The Petition was filed by representatives of the Office of the Special Trial Counsel [OSTC]. (Pet. Request). This court granted the Stay of Proceedings and ordered the government to respond to the abovementioned specified issue.

Standard of Review

Statutory interpretation is a question of law this court reviews de novo. *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017) (citation omitted). "Unless the text of a statute is ambiguous, 'the plain language of a statute will control unless it leads to an absurd result.'" *United States v. Schell*, 72 M.J. 339, 343 (C.A.A.F. 2013) (quoting *United States v. King*, 71 M.J. 50, 52 (C.A.A.F. 2012)) (additional citation omitted). "Whether the statutory language is ambiguous is determined 'by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" *United States*

v. McPherson, 73 M.J. 393, 395 (C.A.A.F. 2014) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997)). “Where ‘only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law,’ that meaning will prevail.” *United States v. Beauge*, 82 M.J. 157, 162 (C.A.A.F. 2022) (quoting *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)).

Law

The All Writs Act, 28 U.S.C. § 1651(a), grants a Court of Criminal Appeals “authority to issue extraordinary writs necessary or appropriate in aid of its jurisdiction.” *Loving v. United States*, 62 M.J. 235, 246 (C.A.A.F. 2005)). In order to prevail on a petition for a writ of mandamus, the petitioner “must show that: (1) there is no other adequate means to attain relief; (2) the right to issuance of the writ is clear and indisputable; and (3) the issuance of the writ is appropriate under the circumstances.” *Hasan v. Gross*, 71 M.J. 416, 418 (C.A.A.F. 2012) (citing *Cheney v. United States Dist. Court*, 542 U.S. 367, 380–81, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004)).

1. Statutory authority.

The Rules for Courts-Martial [R.C.M.] 1203(c), discussion, states: “A Court of Criminal Appeals may on petition for extraordinary relief issue all writs

necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law. *Any party* may petition a Court of Criminal Appeals for extraordinary relief.” (emphasis added). Rules for Courts-Martial 103(20), “Definitions and rules of construction” defines a “party” as: “in the context of parties to a court-martial or other proceedings under these rules, means: . . . (B) Any trial or assistant trial counsel representing the United States, and agents of the trial counsel or such counsel when acting on behalf of the United States with respect to the court-martial or proceedings in question.”

Article 66(h) states: “The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.”²

2. Regulatory authority.

Army Regulation 27-10, paragraph 12-1, states:

² Analogous to this issue, Army Regulation [AR] 27-10, para. 12-3 (8 Jan. 2025), states, “Submission to Chief, Government Appellate Division. . . . In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the Chief, GAD will, after coordination with the LSTC, file an appeal as determined by the LSTC. For offenses over which a special trial counsel does not exercise authority, the Chief, GAD, will, after coordination with the Assistant JAG for Military Law and Operations, decide whether to file the appeal with USACCA and will notify the trial counsel of this decision as soon as it is made. In all cases, the Chief, GAD will be responsible for the substance and content of submissions to the USACCA.”

Prior to seeking extraordinary relief under the All Writs Act (Title 28, Section 1651 of the United States Code), with the USACCA or the USCAAF on behalf of the United States or government officials, in their capacity as government officials, trial counsel, SJAs, or their representatives will coordinate with the Chief, GAD. Special trial counsel will coordinate with the LSTC and with the Chief, GAD. In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the LSTC has exclusive authority to determine whether to seek extraordinary relief. The Chief GAD will notify trial counsel or special trial counsel, as applicable, prior to filing a petition for extraordinary relief.

3. Policy and procedure.

The Joint Rules of Appellate Procedure [J.R.A.P.] 6(c) states, “*Any party* may move the Court to correct any substantial error in the record of trial, to include correcting a transcription of a court-martial proceeding that is attached to the record of trial.” (emphasis added).

Rule 11 states, “In a case involving a petition for extraordinary relief when the United States is represented by counsel or when an accused has been denominated as the real party in interest by a filing party or by the Court, the Judge Advocate General *or his designee* shall also designate appellate military counsel to represent such accused.” J.R.A.P. 11(a) (emphasis added). This court’s rules name the Chief, GAD, at least for purposes of Article 62 appeals, as TJAG’s

designee. A.C.C.A. R. 20.1. Rule 11(a) is silent as to who may be designated as “government appellate counsel.”³

Rule 19.2(c) states: “Unless filed by the Chief, Government Appellate Division, a petition and brief filed on behalf of the United States or any officer or agent thereof shall be coordinated with the Chief, Government Appellate Division.” This rule clearly contemplates the Chief, GAD, not signing every brief, but rather mere “coordinat[ion]” on his or her part. A.C.C.A. R. 19.2(c).⁴

4. Case law.

In *LRM*, the United States Court of Appeals for the Armed Forces [CAAF] held this court had jurisdiction under the All Writs Act to hear the alleged victim’s petition for a writ of mandamus. *LRM v. Kastenber*, 72 M.J. 364, 367–68 (C.A.A.F. 2013). The CAAF explained this was so because the petition sought a ruling on whether the military judge could limit the petitioner’s right to be heard with respect to evidentiary rulings applying Mil. R. Evid. 412 and Mil. R. Evid. 513, which “ha[d] a direct bearing on the information that will be considered by

³ However, Rule 19.3(b) states: “In the event the Court orders the respondent(s) to show cause and file an answer . . . Appellate government counsel will represent the United States. Army Court of Criminal Appeals Rule [A.C.C.A. R.] 19.3(b). To the extent that this court interprets this clause—referencing appellate government counsel—to require personnel assigned to GAD as signatories, it is only applicable once this court has ordered the respondent to show cause and file an answer.

⁴ Notably, the only mention of “restricted filing” is limited to Article 62, UCMJ, appeals. J.R.A.P. 20(a)(1).

the military judge when determining the admissibility of evidence, and thereafter the evidence considered by the court-martial on the issues of guilt or innocence.” *Id.* at 368. Additionally, “LRM’s position as a nonparty to the courts-martial, see Rule for Courts-Martial (R.C.M.) 103(16), does not preclude standing.”

Argument

1. The Chief, GAD, and LSTC have authority to designate OSTC personnel as representatives of the government in a Petition for Extraordinary Relief.

Personnel from the OSTC who are “party” to the court-martial or “agents of the trial counsel or such counsel when acting on behalf of the United States with respect to the court-martial or proceedings in question[,]” may file a Petition for Extraordinary Relief. R.C.M. 1203(c), *discussion*; R.C.M. 103(20); *see also LRM*, 72 M.J. at 368 (“LRM’s position as a nonparty to the courts-martial . . . does not preclude standing.”). The plain language in the discussion section of the statute is plain and unambiguous therefore this court’s analysis should end here.

However, to the extent that this court looks beyond the plain language of the R.C.M., relevant regulations and policy also support this finding. “In all cases, the Chief, GAD will be responsible for the substance and content of submissions to the USACCA[,]” however, this does not require him to sign briefs submitted by counsel on behalf of the government. AR 27-10, para. 12-3; A.C.C.A. R. 19.2(c). Rather, it requires oversight and coordination. This is evident from a plain reading of this court’s rules. A.C.C.A. R. 19.2(c) (“Unless filed by the Chief, Government

Appellate Division, a petition and brief filed on behalf of the United States or any officer or agent thereof shall be *coordinated* with the Chief, Government Appellate Division.”) (emphasis added). The Chief, GAD’s, detailing authority is also clear under a plain reading of AR, 27-10, paragraph 12-1(a). This is especially true where the Lead Special Trial Counsel [LSTC] has exercised jurisdiction, and the LSTC and the Chief, GAD, coordinate the detailing of counsel, as occurred here. AR, 27-10, para. 12-1(a); 12-3(b) (“In cases involving offenses over which a special trial counsel has exercised authority and has not deferred, the LSTC has exclusive authority to determine whether to seek extraordinary relief.”).

2. Personnel designated by the Chief GAD, and the LSTC, have standing before this court on this matter.

In *LRM*, the CAAF found “a nonparty to the courts-martial” did not preclude standing. 72 M.J. 368. The CAAF relied upon “long standing precedent that a holder of privilege has a right to contest and protect the privilege.” *Id.* This logic would certainly apply to an actual party to the court-martial. This is especially true when read in conjunction with R.C.M. 1203(c)’s discussion section. In fact, standing to file such a petition has been greatly expanded in this jurisprudence. *See, e.g., ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997) (“Similarly, when an accused is entitled to a public hearing, the press enjoys the same right and has standing to complain if access is denied.”); *United States v. Harding*, 63 M.J. 65 (C.A.A.F. 2006) (assuming standing for victim's mental health provider); *United*


States v. Johnson, 53 M.J. 459, 461 (C.A.A.F. 2000) (standing for nonparty challenge to a subpoena duces tecum or a subpoena ad testificandum during an Article 32, UCMJ, 10 U.S.C. § 832 (2006), pretrial investigation).

In sum, based on a plain reading of the R.C.M., this court's rules, Army Regulations, and relevant case law from CAAF, OSTC personnel have authority and standing to file a Petition for Extraordinary Relief on behalf of the United States, when said filing was in coordination with the Chief, GAD, and the LSTC.

Conclusion

WHEREFORE, the government respectfully requests this honorable court answer the specified issue in the affirmative and consider the government's petition on its merits.


AN1
CPT, JA
Branch Chief, Government
Appellate Division


RICHARD E. GORINI
COL, JA
Chief, Government
Appellate Division

CERTIFICATE OF SERVICE, U.S. v. STARR (Misc 20250096)

I hereby certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at [REDACTED] [REDACTED] on the 13th day of March, 2025.

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