

UNITED STATES COURT OF MILITARY COMMISSION REVIEW

UNITED STATES,)	ORDER
)	
Appellant)	MILITARY JUDGES' RECUSAL
)	
v.)	IMPROPER DELEGATION OF
)	STATUTORY OBLIGATIONS
ABD AL RAHIM HUSSAYN)	
MUHAMMAD AL-NASHIRI,)	CMCR Case No. 14-001
)	
Appellee)	October 6, 2014

BEFORE:

KRAUSS, PRESIDING Judge SILLIMAN, WEBER, Judges

Military Judges Motion

On September 25, 2014, appellee urged Judges Krauss and Weber to recuse themselves from his case because military officers assigned to the Court violate separation of powers and result in them serving as principal officers in violation of the Appointments Clause, U.S. Const., art. II, § 2, cl. 2. Appellee's Military Appellate Judge Motion 1. On September 29, 2014, appellant disagreed because "even if [U.S. Court of Military Commission Review (UCMCR)] appellate military judges . . . are principal officers, they have already been appointed in accordance with the Appointments Clause as commissioned officers," and USCMCR appellate judges "are properly considered inferior officers" as the Secretary of Defense has statutory "authority to assign and reassign them to other duties" under 10 U.S.C. §§ 949b(b)(4) and 950f(b). Appellant's Military Appellate Judge Motion 1-2 (citations omitted).

The appointments of Judges Krauss and Weber to the USCMCR and their continued service on the USCMCR are lawful and consistent with the Appointments Clause and the Military Commissions Act of 2009, 10 U.S.C. §§ 948a, et seq. See Edmond v. United States, 520 U.S. 651 (1997) and Weiss v. United States, 510 U.S. 163 (1994). Their recusal is not required and Judges Krauss and Weber decline to recuse themselves from appellee's case.

Improper Delegation of Statutory Obligations Motion

On September 26, 2014, appellee filed a motion for appropriate relief requesting the Court to "terminate the devolution of its judicial responsibilities onto the Clerk of Court." On September 29, 2014, appellant filed its opposition recognizing that the Clerk of Court "performs ministerial functions that clerks of court typically perform in courts throughout the United States" and that '[t]he Clerk does not direct or supervise the Court."

As the Clerk of this Court exercises no judicial responsibilities and neither rule nor practice endow the Clerk of this Court with any such responsibility, we hold appellee's motion to be without merit and deny the same.

Therefore, it is hereby

ORDERED that appellee's motion that Judges Krauss and Weber recuse themselves from appellee's case is **DENIED**.

ORDERED that appellee's motion regarding our Court's improper delegation of its statutory obligations is **DENIED**.

FOR THE COURT:

Mark Harvey

Clerk of Court, U.S. Court of Military

Commission Review

mark Harvey