

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

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UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD,  
WALID MUHAMMAD SALIH  
MUBARAK BIN ‘ATTASH,  
RAMZI BIN AL SHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM  
AL HAWSAWI

AE 897D

RULING

Lead Counsel’s Position on Removal of  
Detailed Military Defense Counsel

2 December 2022

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**1. Procedural History.**

a. On 26 September 2022, Learned Counsel for Mr. Hawsawi (Mr. Walter Ruiz) filed<sup>1</sup> a Notice of *Ex Parte* and Under Seal Filing. In addition to providing the Commission with information appropriate for *ex parte* consideration, AE 897 (MAH) also contained a motion for specific relief.

b. On 27 and 30 September 2022, the Commission held *ex parte* sessions with Mr. Hawsawi and his Defense Team to inquire about the issues raised by Learned Counsel in AE 897 (MAH) as well as Mr. Hawsawi’s position raised through AE 895E (MAH).<sup>2</sup> During the 27 September 2022 *ex parte* session, Mr. Hawsawi submitted an *ex parte* letter for the Commission’s consideration.<sup>3</sup>

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<sup>1</sup> See AE 897 (MAH), Mr. al Hawsawi’s Notice of *Ex Parte* and Under Seal Filing, filed 26 September 2022.

<sup>2</sup> AE 895E (MAH), Mr. al Hawsawi’s Notice of Declination of Joinder to AE 895C (WBA), and Statement of Separate Position Regarding September-October 2022 Session, filed 23 August 2022.

<sup>3</sup> See AE 895U (MAH), *Ex Parte/Under Seal In Court Submission*, filed 27 September 2022.

c. After receiving a subsequent *ex parte* filing from an Assistant Detailed Defense Counsel for Mr. Hawsawi (U.S. Army Reserve Lieutenant Colonel (LTC) Jennifer Williams) on 5 October 2022,<sup>4</sup> the Commission invited<sup>5</sup> the Chief Defense Counsel (CDC) to provide the Commission with information as to a matter germane to the issues raised in AE 897 (MAH). On 14 October 2022, the CDC responded with an *ex parte* filing.<sup>6</sup>

d. On 18 October 2022, the Commission deferred ruling on AE 897 (MAH) and ordered Mr. Ruiz to file a non-*ex parte* motion containing sufficient information about the motion (without disclosing privileged material) to allow the Prosecution to file a response.<sup>7</sup>

e. On 26 October 2022, Mr. Ruiz complied and submitted a non-*ex parte* supplement to his motion advising the parties that he was seeking the removal of LTC Williams as assistant detailed defense counsel for good cause, over the objection of Mr. Hawsawi.<sup>8</sup> On 31 October 2022, the Prosecution responded to Mr. Ruiz's supplement.<sup>9</sup> In the response, the Prosecution advised the Commission: "As communicated by Learned Counsel, it is the understanding of the Prosecution that Mr. Hawsawi does not want to release LTC Williams, would like her to lead his

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<sup>4</sup> See AE 895V (MAH), Mr. al Hawsawi's Notice of *Ex Parte* and Under Seal Filing, filed 5 October 2022. See also AE 004G (MAH), Memorandum for Lieutenant [sic] Colonel Jennifer N. Williams, USAR, JAGC, Case of *United States v. Hawsawi (10011)*, filed 8 August 2014 (detailing LTC Williams as Assistant Detailed Military Counsel).

<sup>5</sup> See AE 898 Order, Invitation for Chief Defense Counsel to Provide the Military Commission with Information as to the Status of a Pending Individual Military Counsel Request, dated 7 October 2022.

<sup>6</sup> See AE 898A (MCDO), Third Party Notice of *Ex Parte*, *In Camera*, *Under Seal for in Camera Review*, filed 13 October 2022.

<sup>7</sup> See AE 897A, Interim Order, Notice of *Ex Parte* and Under Seal Filing, dated 18 October 2022.

<sup>8</sup> See AE 897 (MAH Sup), Learned Counsel's Position on the Removal of Detailed Military Defense Counsel, filed 26 October 2022. The Commission subsequently ordered Attachment D of AE 897 (MAH Sup) sealed. See AE 897B, Notice of Sealing Order Relevant to AE 897 (MAH Sup) dated 28 October 2022.

<sup>9</sup> See AE 897C (GOV), Government Response to AE 897 (MAH Sup), Learned Counsel's Position on the Removal of Detailed Military Defense Counsel, filed 31 October 2022.

team in lieu of current Learned Counsel and that LTC Williams would like to continue as counsel and remain on active duty.”<sup>10</sup>

## 2. Law.

### a. Accused Right to Counsel – the Military Commissions Act of 2009 (M.C.A.).

(1) The M.C.A. requires a military Defense Counsel be detailed to represent an Accused facing trial by Military Commission.<sup>11</sup> For cases referred capital, the Accused has a right, “to the greatest extent practicable” to be represented by a counsel who is “learned in applicable law relating to capital cases.”<sup>12</sup> Assistant and associate defense counsel “may” be detailed to represent the Accused.<sup>13</sup>

(2) The M.C.A. empowers the Secretary of Defense (SECDEF) to prescribe regulations providing for the manner in which military defense counsel are detailed.<sup>14</sup> Pursuant to this authority, the SECDEF promulgated the Rules for Military Commissions (R.M.C.) 502(d)(2), (3), and (6), 503(c), and 506(a)-(d) and Chapter 9 of the Regulation for Trial by Military Commissions (R.T.M.C.) (2011, as amended in 2016).

### b. Accused Right to Counsel – R.M.C. 502(d)(2), (3), and (6); R.M.C. 503(c), and R.M.C. 506(a)-(d).

(1) R.M.C. 506(a)-(d) clarified the Accused’s right to counsel as set forth in the M.C.A.<sup>15</sup> The rule affords the Accused the right to be represented by:

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> *See* 10 U.S.C. § 948k(a)(1).

<sup>12</sup> 10 U.S.C. § 949a(2)(C)(ii).

<sup>13</sup> *See* 10 U.S.C. 948k(a)(2).

<sup>14</sup> *See* 10 U.S.C. 948k(a)(4).

<sup>15</sup> *See* 10 U.S.C. § 948k(a)(1) and (2) and 10 U.S.C. § 949a(2)(C)(ii).

(A) civilian counsel, if provided at no expense to the government;<sup>16</sup>

(B) at least one military counsel detailed under R.M.C. 503;<sup>17</sup>

(C) at least one counsel who is “learned in applicable law related to capital cases for cases referred capital;<sup>18</sup>

(D) individual military counsel (IMC) assigned or detailed to the Military Commissions Defense Organization (MCDO) who the CDC determines in his sole discretion is reasonably available;<sup>19</sup> and

(E) self-representation, if the Accused knowingly and competently waives the assistance of counsel and the Accused’s department and conduct conforms to “the rules of evidence, procedure, and decorum applicable to trials by military commission.”<sup>20</sup>

(2) R.M.C. 502(d)(2) and (3) set forth the qualifications for military and civilian defense counsel. R.M.C. 502(d)(7) establish the duties of defense and associate or assistant defense counsel. Paragraph (F) to the discussion of R.M.C. 502(d)(7) more specifically governs the duties of associate and assistant defense counsel:

Associate or assistant counsel may act in that capacity only when under the qualifications or the supervision and by the general direction of the defense counsel. A detailed defense counsel becomes associate defense counsel when the accused has other military or civilian counsel and detailed counsel is not excused. Although associate counsel acts under the general supervision of the defense counsel, associate defense counsel may act without such supervision when circumstances require and only if such counsel has the qualifications to act as defense counsel. Responsibility for trial of a case may not devolve upon an assistant who is not qualified to serve as defense counsel. An assistant defense counsel may not act in

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<sup>16</sup> R.M.C. 506(a),

<sup>17</sup> *Id.* R.M.C. 506(a) clarifies “the accused is not entitled to be represented by more than one military counsel” regardless of whether the person authorized to detail counsel may, in such person’s sole discretion, chose to detail additional military counsel.

<sup>18</sup> R.M.C. 506(b).

<sup>19</sup> *See* R.M.C. 506(c).

<sup>20</sup> R.M.C. 506(d).

the absence of the defense counsel at trial unless the assistant has the qualifications required of a defense counsel. Unless the contrary appears, all acts of an assistant or associate defense counsel are presumed to have been done under the supervision of the defense counsel.<sup>21</sup>

(3) R.M.C 503(c) requires defense counsel be detailed “as soon as practicable after charges are sworn,” and empowers the SECDEF to prescribe regulations pertaining to the detail of defense counsel for military commissions. Pursuant to this authority, the SECDEF promulgated Chapter 9 of the R.T.M.C., which governs the qualifications and detail of Learned, Military, and Assistant Military and Civilian Defense Counsel<sup>22</sup> and authorizes the CDC to detail and supervise all defense counsel for military commissions and decide defense counsel availability for IMC requests.<sup>23</sup>

c. Changes of Military Defense Counsel After Formation of Attorney-Client Relationship.

(1) R.M.C. 505(d)(2)(B) and R.M.C. 505(f) govern changes in defense counsel after formation of Attorney-Client relationships. “After an attorney-client relationship has been formed between the accused and any counsel for the accused, only the military judge may excuse or change counsel upon a showing of good cause on the record.”<sup>24</sup>

(2) Good cause includes “physical disability, military exigency, and other extraordinary circumstances which render the member, counsel, or military judge unable to proceed with the commission within a reasonable time.”<sup>25</sup> Good cause “does not include

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<sup>21</sup> Discussion to R.M.C. 502(d)(7) at (F).

<sup>22</sup> See R.T.M.C. 9-1.

<sup>23</sup> See R.T.M.C. 9-1.9-2, and 9-3.

<sup>24</sup> R.M.C. 505(d)(2)(B).

<sup>25</sup> R.M.C. 505(f).

temporary inconveniences which are incident to normal conditions of military life.”<sup>26</sup> Separation from active duty normally terminates representation absent “highly contextual circumstances” warranting an exception in a particular case.<sup>27</sup>

(3) The right to effective assistance of counsel and to the continuation of an established attorney-client relationship is fundamental in the military justice system.<sup>28</sup> “Defense counsel are not fungible items. Although an accused is not fully and absolutely entitled to counsel of choice, he is absolutely entitled to retain an established relationship with counsel in the absence of demonstrated good cause.”<sup>29</sup>

(4) The controlling precedent for the Commission is *United States v. Bostick*, 791 F.3d 127, 156 (D.C. Cir. 2015) which requires an indigent accused to establish good cause to sever his relationship with any attorney detailed to his Defense Team. Good cause is not just a general dissatisfaction with counsel, or even a disagreement with trial strategy or tactics.<sup>30</sup> Good cause is something so severe as “a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.”<sup>31</sup>

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<sup>26</sup>*Id.*

<sup>27</sup> See *United States v. Hohman*, 70 M.J. 98, 99 (C.A.A.F. 2011) (citing *United States v. Hutchins*, 69 M.J. 282, 290-291 (C.A.A.F. 2011)).

<sup>28</sup> See *United States v. Palenius*, 2 M.J. 86 (C.M.A. 1977).

<sup>29</sup> *United States v. Baca*, 27 M.J. 110, 111, 119 (C.M.A. 1988); see also *Maine v. Moulton*, 474 U.S. 159, 170–71 (1985); *United States v. Stein*, 541 F.3d 130, 154 (2d Cir. 2008) (quoting *Herring v. New York*, 422 U.S. 853, 858 (1975)); *United States v. Eason*, 45 C.M.R. 109, 113–14 (1972); *United States v. Murray*, 20 U.S.C.M.A. 61, 42 C.M.R. 253, 254 (1970) (where several options were available, the convening authority’s failure to choose any option at all until after counsel’s departure “effectively deprived the accused of the services of his appointed counsel.”).

<sup>30</sup> *United States v. Allen*, 789 F.2d 90, 93 (1st Cir. 1986), cert. denied, 479 U.S. 846 (1986).

<sup>31</sup> *Smith v. Lockhart*, 923 F. 2d 1314, 1320 (8th Cir. 1991); see also *United States v. Porter*, 405 F.3d 1136, 1140 (10th Cir. 2005) (permitting “substitution or withdrawal of counsel only when there is good cause, such as a conflict of interest, a complete breakdown of communication or an irreconcilable conflict...”).

(5) “An indigent criminal defendant who seeks court-appointed counsel does not have a constitutional right to choose his attorney; ‘he has only the right to effective representation.’”<sup>32</sup> An accused is guaranteed the assistance of competent counsel; not the right to a “meaningful relationship” with counsel.<sup>33</sup> Loss of trust or confidence in an attorney or attorneys, absent an objective, legitimate reason, is insufficient cause to warrant assignment of substitute counsel.<sup>34</sup> Disagreements over trial tactics and defense strategy, or even a personality conflict between counsel and client, will not impair the right to effective representation.<sup>35</sup> Similar analysis is used by federal, state, and military courts to determine severance issues where a defendant requests to sever his relationship with his attorney and where an attorney wishes to withdraw from the representation.<sup>36</sup>

### 3. Findings of Fact.

a. On 18 April 2012, the CDC detailed Mr. (then Commander) Ruiz as Learned Counsel to represent Mr. Hawsawi.<sup>37</sup> On 5 May 2012, Mr. Ruiz made his notice of appearance on the

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<sup>32</sup> *Bostick*, 791 F.3d at 156, quoting *Graham*, 91 F.3d at 217; see also *United States v. Francois*, 715 F.3d 21, 28-29 (1st Cir. 2013) (stating in some circumstances a trial court may compel a defendant to go to trial with an unwanted attorney or to proceed pro-se. In such a circumstance a defendant does not show good cause simply because the defendant did not like the advice given by counsel).

<sup>33</sup> *Morris v. Slappy*, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1983).

<sup>34</sup> See *United States v. Allen*, 789 F.2d 90, 93 (1st Cir. 1986), cert. denied, 479 U.S. 846, 107 S. Ct. 164, 93 L. Ed. 2d 103 (1986).

<sup>35</sup> See *United States v. Lindsey*, 48 M.J. 93, 98 (C.A.A.F. 1998).

<sup>36</sup> See *Thompson v. Special Enforcement, Inc.*, 2008 U.S. Dist. LEXIS 91364, \*4 (C.D. Cal. Oct. 27, 2008) (holding where an attorney seeks to withdraw the moving party has the burden to establish good cause and demonstrate the ends of justice require severance); *United States v. Porter*, 405 F.3d 1136, 1140 (10th Cir. 2005) (permitting “substitution or withdrawal of counsel only when there is good cause, such as a conflict of interest, a complete breakdown of communication or an irreconcilable conflict...”); *United States v. Barnes*, 63 M.J. 563 (A.F. Ct. Crim. App. 2006) (holding despite the strong bonds of an attorney-client relationship, an attorney may withdrawal when there is good cause shown on the record.).

<sup>37</sup> See AE 004 (MAH), Detailing Memorandum (Commander Ruiz), filed 18 April 2012.

record.<sup>38</sup> Mr. Ruiz has established an attorney-client relationship with Mr. Hawsawi and has served as his Learned Counsel in this Commission for over 10 years.

b. On 8 August 2014, the CDC detailed LTC Williams to serve as an “Assistant Detailed Defense Counsel” for Mr. Hawsawi.<sup>39</sup> On 14 August 2014, she entered her notice of appearance on the record.<sup>40</sup> LTC Williams has established an attorney-client relationship with Hawsawi and has represented Mr. Hawsawi as an Assistant Detailed Defense Counsel for over 8 years.<sup>41</sup>

c. Mr. Hawsawi is represented by three additional detailed defense counsel:

(1) Mr. Sean Gleason, then U.S. Marine Corps Lieutenant Colonel (LtCol) Gleason was originally detailed as “military defense counsel” and entered an appearance on 13 December 2013.<sup>42</sup> He has since transitioned to civilian counsel.<sup>43</sup>

(2) Ms. Suzanne Lachelier was detailed as Assistant Defense Counsel on 25 August 2015.<sup>44</sup> She entered an appearance on 19 October 2015.<sup>45</sup>

(3) U.S. Army Major (MAJ) Joseph Wilkerson II was detailed as “Defense Counsel” and entered an appearance on 9 March 2017.<sup>46</sup>

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<sup>38</sup> See Unofficial/Unauthenticated Transcript, United States v. Khalid Shaikh Mohammad et al., 5 May 2012, at pp. 106-107.

<sup>39</sup> See AE 004G (MAH) at 1.

<sup>40</sup> See Transcript, 14 August 2014, at pp. 8114-8115.

<sup>41</sup> LTC Williams began working with Mr. Hawsawi’s defense team in a support capacity in August 2012 but did not establish an attorney-client relationship with Mr. Hawsawi until her detail on 8 August 2014.

<sup>42</sup> See AE 004D (MAH), Notice of Detailing and Appearance of Military Defense Counsel, filed 13 December 2013.

<sup>43</sup> LtCol Gleason left military service in 2017 but remained on the Hawsawi Defense Team. See Transcript, 15 May 2017, at 15577; see also Transcript, 16 May 2017, at 15956.

<sup>44</sup> See AE 004I (MAH), Detailing as Assistant Defense Counsel in the Military Commission Case of United States v. Mustafa Ahmed Adam al-Hawsawi (10011), filed 25 August 2015.

<sup>45</sup> See Transcript, 19 October 2015, at pp. 8500-8501.

<sup>46</sup> See AE 004V (MAH), Notice of Detailing and Appearance of Defense Counsel, filed 9 March 2017.



d. Mr. Ruiz asserts that three additional attorneys have been assigned to Mr. Hawsawi's Defense Team: MAJ Hiller, MAJ Campbell, and Ms. Eliades.<sup>47</sup> These counsel are not detailed to represent Mr. Hawsawi, nor have they entered an appearance.

e. While LTC Williams is a member of the U.S. Army Reserves, she has been assigned to MCDO on one-year, renewable, active duty orders. These orders have been renewed annually since 2012.

f. LTC Williams, as an "Assistant" Defense Counsel, has never been a "statutorily required" counsel. During her tenure, LtCol Gleason was the statutorily required Military Detailed Defense Counsel as of 13 December 2013, followed by MAJ Wilkinson from 9 March 2017 to the present date.

g. Prior to 18 July 2022, there was friction within the Hawsawi Defense Team, and Mr. Hawsawi voiced dissatisfaction with his Defense Team.<sup>48</sup>

h. From 18 July 2022 onward, the following events occurred:

(1) On 18 July 2022, Mr. Ruiz advised LTC Williams he would not recommend the next renewal of her one-year active duty orders, which were scheduled to terminate 30 September 2022.

(2) On 19 July 2022, the CDC approved LTC Williams's transition from the Hawsawi Defense Team to work in the MCDO front office pending expiration of her active duty

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<sup>47</sup> See AE 897 (MAH Sup) at 1-2.

<sup>48</sup> The Commission engaged in extensive *ex parte* colloquy with Mr. Hawsawi to discern the scope and sources of Mr. Hawsawi's frustration with his defense team and the friction between Mr. Ruiz and LTC Williams during the 27 and 30 September 2022 *ex parte* sessions. Because this discussion involved privileged attorney-client communications and deliberations among the defense team, the Commission will not elaborate on the facts discussed during the colloquy in this ruling to all the parties. Instead, the Commission will add an *ex parte* supplement to this ruling to more fully explain its findings and analysis.

orders. The CDC also approved two extensions of LTC Williams orders to enable her to handle administrative matters. These extensions expire in March 2023. The CDC, however, does not support additional extension of LTC Williams's orders to active duty.

(3) On 21 July 2022, LTC Williams alleged to the CDC that Mr. Ruiz had committed ethical violations in that he had a conflict of interest in Mr. Hawsawi's case and had a duty to withdraw.

(4) On 28 July 2022, the CDC initiated an investigation into LTC Williams's allegations and appointed an investigator from outside the MCDO as investigating officer (IO).

(5) On 30 August 2022, the IO delivered their investigative report to the CDC. The investigation concluded that Mr. Ruiz committed no ethical violations and his continued representation of Mr. Hawsawi did not create a conflict of interest.

(6) On or about 9 September 2022, the CDC directed the MCDO Office of General Counsel to review and analyze the IO's report. The MCDO Office of General Counsel concurred with the IO's findings that Mr. Ruiz committed no ethical violations and did not have a conflict of interest. The CDC also concurred with the findings.

(7) On 12 September 2022, the CDC advised Mr. Ruiz via memorandum of the results of the investigation and that the CDC would take no further action on the matter. The CDC also gave a copy of the memorandum to LTC Williams (but not the final report of investigation).

(8) On 22 September 2022, Counsel for Mr. Hawsawi moved the Commission to allow LTC Williams to participate in the 24-30 September 2022 *ex parte* hearings from the

remote hearing room (RHR) in the National Capital Region.<sup>49</sup> Mr. Hawsawi's position was included in an *ex parte* attachment. LTC Williams was not a signatory to the motion. On 23 September 2022, the Commission granted the motion.<sup>50</sup>

(9) On 24 September 2022, the CDC met with Mr. Ruiz and LTC Williams for 2 and ½ hours to discuss and attempt to resolve the friction within the team and move forward. The CDC concluded from the results of the investigation and his observations of what occurred during the meeting that LTC William's continued assignment as Assistant Defense Counsel for Mr. Hawsawi would be damaging and counter-productive to the Hawsawi Defense Team.<sup>51</sup>

(10) On 27 and 30 September 2022, the Commission conducted two *ex parte* hearings with Mr. Hawsawi and his Defense Team. LTC Williams participated from the RHR. The Commission explored in-depth the issues Mr. Hawsawi raised regarding his desire to discharge Mr. Ruiz for good cause. The Commission also heard from Mr. Ruiz and LTC Williams. At the conclusion of the 30 September 2022 hearing, the Commission ruled on the record that Mr. Hawsawi had not established a justifiable dissatisfaction with Mr. Ruiz's representation that rose to the level of an irreconcilable conflict or complete breakdown of communications, nor did he have other good cause to sever his relationship with Mr. Ruiz. The Commission explained the rationale for the finding during the *ex parte* session. Because the

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<sup>49</sup> See AE 895Q (MAH), Motion for Authorization for Counsel to Appear From the Remote Hearing Room, filed 22 September 2022.

<sup>50</sup> See AE 895S, Ruling, Motion for Authorization of Counsel to Appear from the Remote Hearing Room, dated 23 September 2022.

<sup>51</sup> More specific details as to why the CDC reached this determination are in paragraphs 12 and 13 of his affidavit at Attach C to AE 897 (MAH) filed *ex parte*. The same affidavit is at Attach C to AE 897 (MAH Sup) but with paragraphs 12 and 13 redacted because it dealt with privileged attorney-client communications and deliberations. The Commission will address the substance of paragraphs 12 and 13 more fully in the *ex parte* supplement to this ruling.

Commission's rationale for finding no good cause to sever Mr. Ruiz is inextricably intertwined with privileged attorney-client communications and deliberations, the detailed rationale will remain in the *ex parte* record and thereby be available for review by appellate authorities.

(11) On 14 October 2022, the CDC filed a document with the Commission. This document will be further discussed in the *ex parte* supplement to this ruling.

i. The decision by Mr. Ruiz and the CDC not to support further extension of LTC Williams's active duty orders beyond 31 March 2022 is a matter entirely within the purview of the Hawsawi Defense Team and MCDO. The Prosecution has had no involvement in the matter.

#### 4. Analysis.

a. ***Ex Parte Filings and Colloquy. Ex Parte Filings.*** The Commission recognizes that *ex parte* proceedings are generally disfavored. However, in this case, Mr. Hawsawi's dissatisfaction with his defense counsel and the scope of the matters investigated by the IO regarding LTC Williams's allegations of ethical misconduct and conflict of interest by Mr. Ruiz involved Mr. Hawsawi's Defense Team cohesion, ethics, strategy, and communications protected by attorney-client and work product privileges. Courts have recognized the need for *ex parte* hearings in such cases.<sup>52</sup> Accordingly, the Commission has struck a balance by requiring Mr. Ruiz to file a non-*ex parte* supplement (AE 897 (MAH Sup)) to advise the Prosecution and other Defense parties of the nature of the issues raised in AE 897 (MAH) and AE 895E (MAH) as well as the general nature of Mr. Hawsawi's concerns with his Defense Team. The underlying facts of the investigation and the asserted impact on the Hawsawi Defense Team has been considered by the Commission *ex parte*; however, the nature of the investigation, the relief requested by Mr. Ruiz

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<sup>52</sup> See generally *United States v. Rhea*, 33 M.J. 413, 419 (C.A.A.F. 1991).

and the CDC in *ex parte* filings, and the relevant communications between the Commission and Mr. Hawsawi are set forth in this ruling.

**b. Good Cause – Trial Team Dysfunction.**

(1) The Commission has previously addressed the situation where an Accused sought to sever one or more of his defense counsel<sup>53</sup> as well as the situation where the Learned Counsel for one of the Accused moved to withdraw for good cause.<sup>54</sup> The issue before this Commission here is unusual in that it is the Learned Counsel, rather than the Accused or the affected counsel, who is seeking the withdrawal. Learned Counsel for Mr. Hawsawi has moved to sever Mr. Hawsawi's relationship with one of his Assistant Detailed Defense Counsel, LTC Williams, over Mr. Hawsawi's objection.<sup>55</sup>

(2) This Commission has previously ruled in AE 380VV and AE 006ZZ/AE 886W that good cause must be shown to sever an accused's relationship to any of his detailed defense counsel, to include those detailed counsel not "statutorily required."<sup>56</sup> The Commission finds the law and the standards for establishing good cause set forth in AE 380VV apply here as well.

(3) The Commission conducted extensive inquiry into the nature of Mr. Hawsawi's dissatisfaction with his Defense Team and the impact of the dysfunctional

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<sup>53</sup> See AE 380VV, Ruling, Request By Mr. bin 'Attash to Sever and Replace Attorneys On His Defense Team, dated 26 August 2016. See also AE 006ZZ/AE 886W, Ruling, Motion by Ms. Cheryl T. Bormann to Withdraw from Representing Mr. bin 'Attash as Learned Counsel, dated 23 March 2022.

<sup>54</sup> See AE 006ZZ/AE 886W, Ruling. See also AE 761F, Interim Ruling, Defense Request for Excusal of Learned Defense Counsel, dated 13 March 2020.

<sup>55</sup> As discussed earlier in this ruling, during the *ex parte* session with Mr. Hawsawi and his defense team on 30 September 2022, the Commission ruled on the record that Mr. Hawsawi had not established good cause to sever Mr. Ruiz.

<sup>56</sup> See AE 380VV at 6.

relationship between Mr. Ruiz and LTC Williams. In making its determination, the Commission considered all of the filings by the parties and the information and evidence presented during the 27 and 30 September 2022 *ex parte* sessions.

(4) As the Learned Counsel, Mr. Ruiz is the lead defense counsel for Mr. Hawsawi and is recognized as such by his Defense Team.<sup>57</sup> LTC Williams is an Assistant Defense Counsel who works under the supervision of Mr. Ruiz.<sup>58</sup> Thus, the final decisions regarding defense tactics and strategy fall to the Learned Counsel, not an Assistant Defense Counsel.

(5) The Commission has also considered the affidavit reflecting the view of the CDC that LTC Williams's allegations of ethical misconduct and conflict of interest were unsubstantiated and that LTC Williams's continued assignment to the Hawsawi Defense Team would be damaging and counter-productive to his defense.<sup>59</sup> As the R.T.M.C. designates the CDC as the supervisor of "all defense activities," with specific responsibility for the detail and supervision of all defense counsel for military Commissions, the Commission gives his determination some deference.<sup>60</sup>

**c. Good Cause – Release from Active Duty.**

(1) LTC Williams would like to remain on active duty and continue to represent Mr. Hawsawi. However, her supervisors, Mr. Ruiz and the CDC, do not support her continuation

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<sup>57</sup> See *e.g.* Transcript, 10 September 2021, at pp. 33574-33575 (Ms. Lachelier advising the Commission that the MAH team was unable to proceed in Mr. Ruiz's absence.)

<sup>58</sup> See Discussion to R.M.C. 502(d)(7).

<sup>59</sup> The Commission notes that, although the underlying facts leading to the CDC's conclusions are redacted from his affidavit submitted in the public filing at Attach C. to AE 897 (MAH Sup), paragraphs 12 and 13, the Commission has considered these facts in the non-redacted affidavit, filed *ex parte* at Attach C to AE 897 (MAH).

<sup>60</sup> See R.T.M.C. 9-1(a).

on active duty or continued representation of Mr. Hawsawi. The decisions regarding LTC Williams's active duty orders remain entirely within MCDO, as her personal desire for continued employment on active duty is irrelevant to—and inappropriate if it is in conflict with—the best interests of the client to have a cohesive defense team. This is not a case where the Prosecution has taken any action to alter the composition of the defense team by removing a team member from active duty. Instead, it is a case where both the Learned Counsel and the CDC have determined that an alteration of Mr. Hawsawi's Defense Team is in the best interest of Mr. Hawsawi.

(2) Separation from active duty normally terminates representation absent “highly contextual circumstances” warranting an exception in a particular case.<sup>61</sup> In this case, LTC Williams presents no such “highly contextual circumstances.” If LTC Williams is severed from the case, Mr. Hawsawi will continue to be represented by Learned Counsel, Detailed Military Counsel, two additional detailed counsel, and three support counsel who have not been detailed. The record reflects no particularized expertise or experience by LTC Williams that cannot be replicated by Mr. Hawsawi's remaining defense counsel. The proceedings are in the pretrial phase and a trial date has not yet been set.

## 5. Conclusions of Law.

a. The weight of the evidence presented to the Commission establishes that LTC Williams's continued presence on the Hawsawi Defense Team will be disruptive and continue to negatively impact the cohesion of the Defense effort. Accordingly, the Commission finds good

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<sup>61</sup> See *United States v. Hohman*, 70 M.J. 98, 99 (C.A.A.F. 2011) (citing *United States v. Hutchins*, 69 M.J. 282, 290-291 (C.A.A.F. 2011)).

cause on this basis to sever LTC Williams representation of Mr. Hawsawi as an Assistant Detailed Defense Counsel.

b. The Commission finds LTC Williams's pending separation from active duty constitutes good cause to sever LTC Williams's representation of Mr. Hawsawi as an Assistant Detailed Defense Counsel.

6. **RULING.** The motion to sever LTC Williams for good cause is **GRANTED**, effective this date.

So **ORDERED** this 2nd day of December, 2022.

//s//  
MATTHEW N. MCCALL, Colonel, USAF  
Military Judge  
Military Commissions Trial Judiciary