

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

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| <p><b>UNITED STATES OF AMERICA</b></p> <p><b>v.</b></p> <p><b>MAJID SHOUKAT KHAN</b></p> | <p><b>AE 040T<br/>(Corrected Copy)*</b></p> <p><b>RULING</b></p> <p><b>Defense Motion to Disqualify<br/>the Convening Authority</b></p> <p><b>13 July 2020</b></p> |
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**1. Procedural History.**

a. The Acting Secretary of Defense appointed Rear Admiral Christian L. Reismeier, USN (Ret.), (hereinafter, “Mr. Reismeier”) as Convening Authority (CA) for Military Commissions on 23 May 2019, with an effective date of 22 May 2019.<sup>1</sup>

b. On 26 September 2019, the Defense filed AE 040,<sup>2</sup> moving this Commission to disqualify Mr. Reismeier for three reasons: 1) the CA is a type-three accuser under Rule for Military Commission (“R.M.C.”) 504(c); 2) the CA has an inelastic attitude towards relevant issues in the case including the availability of pretrial punishment credit; and 3) there is an appearance of conflict based on the CA’s quasi-judicial role in the case especially with regard to plea negotiations.

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<sup>1</sup> AE 040, Defense Motion to Disqualify the Convening Authority, filed 26 September 2019, Att. C

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

\*Correction made on page 4 from June to July.

c. The Government responded in opposition to the motion in AE 040A.<sup>3</sup> The Defense replied in AE 040B.<sup>4</sup> The Commission ordered that Mr. Reismeier be made available for testimony.<sup>5</sup>

d. The Defense filed a Supplement to the Motion, stating the reason was in order to respond to an additional 1,000 pages of discovery.<sup>6</sup> The Government responded in AE 040E<sup>7</sup> and the Defense replied in AE 040F.<sup>8</sup> The parties also filed Notices of Exhibits on 20 February 2020 in AE 040G and AE 040H.<sup>9</sup> Several additional pleadings were filed and the Commission heard testimony and oral argument during 25-26 February 2020 motions session at U.S. Naval Station Guantanamo Bay, Cuba.<sup>10</sup>

e. Subsequently on 17 April 2020, Mr. Reismeier's appointment as CA was revoked. *See* AE 040K.<sup>11</sup>

f. On 23 April 2020, this Commission ordered the Parties to file briefs indicating their respective positions as to whether the designation of a new CA and revocation of Mr. Reismeier's appointment rendered AE 040 moot. *See* AE 040L.<sup>12</sup> The Parties filed responsive

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<sup>3</sup> AE 040A, Government Response to Defense Motion to Disqualify the Convening Authority, filed 10 October 2019.

<sup>4</sup> AE 040B, Defense Reply to Government Response to Defense Motion to Disqualify the Convening Authority, filed 17 October 2019.

<sup>5</sup> AE 040C, Order, dated 21 October 2019.

<sup>6</sup> *See* AE 040D (Corrected Copy), Supplemental Pleading in Support of Defense Motion to Disqualify the Convening Authority, filed 24 January 2020.

<sup>7</sup> AE 040E, Government Response To Supplemental Pleading in Support of Defense Motion to Disqualify the Convening Authority, filed 7 February 2020.

<sup>8</sup> AE040F, Defense Reply to Government Response to Supplemental Pleading in Support of Defense Motion to Disqualify the Convening Authority, filed 14 February 2020.

<sup>9</sup> AE 040G, Defense Notice of Exhibits, filed 20 February 2020; AE 040H Government Notice of Exhibits, filed 20 February 2020.

<sup>10</sup> Unofficial/Unauthenticated Transcript of Motions Hearings dated 25-26 February 2020, at pp. 576-740, 742-814.

<sup>11</sup> AE 040K, Government Notice Regarding Designation of New Convening Authority for Military Commissions, filed 21 April 2020.

<sup>12</sup> AE 040L, Order, dated 23 April 2020.

briefs on 7 May 2020; 19 May 2020; and 26 May 2020. AE 040N;<sup>13</sup> AE 040N (SUP);<sup>14</sup> AE 040O;<sup>15</sup> and AE 040S.<sup>16</sup>

## 2. Law & Analysis.

a. “An issue is moot if resolving it would not result in a material alteration of the situation for the accused or for the Government.” *United States v. Napoleon*, 46 M.J. 279, 281 (C.A.A.F. 1997) (quoting *United States v. Clay*, 10 M.J. 269 (C.M.A. 1981) (internal quotation marks omitted)). An issue can also become moot “when, among other things, the court can provide no effective remedy because a party has already ‘obtained all the relief that [it has] sought.’” *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2015) (quoting *Monzillo v. Biller*, 735 F.2d 1456, 1459 (D.C. Cir. 1984)).

b. Because the Defense sought the prospective disqualification of Mr. Reismeier as CA, and he no longer serves in that capacity, the motion is moot. *See In re Al-Nashiri*, 921 F.3d 224, 241 (D.C. Cir. 2019) (dismissing mandamus petition as moot where petitioners received “all the relief that [they have] sought”) (citation and internal quotation marks omitted).<sup>17</sup>

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<sup>13</sup> AE 040N, Defense Brief Regarding Whether AE 040 is Moot, filed 7 May 2020.

<sup>14</sup> AE 040N (SUP), Defense Supplement to AE 040N, Defense Brief Regarding Mootness, filed 19 May 2020.

<sup>15</sup> AE 040O, Government Brief in Response to AE 040L, filed 7 May 2020.

<sup>16</sup> AE 040S, Government Response to Defense Supplement to AE 040N, Defense Brief Regarding Mootness, filed 26 May 2020.

<sup>17</sup> If the Defense requires additional funding hours for its expert witness beyond the 175 hours approved by Mr. Reismeier, the Defense may petition the new Convening Authority and, if necessary, this Commission. If the Defense finds Mr. Reismeier in his role as Director, Office of the Convening Authority, has either improperly influenced the new Convening Authority or otherwise acted unlawfully in a manner which adversely impacts the fair trial of the Accused, the Defense is equally authorized to and fully capable of petitioning the Commission for relief.

**3. Ruling.**

The Defense Motion to Disqualify the Convening Authority (AE 040) is **DENIED** as **MOOT**.

So **ORDERED** this 13th day of **July**, 2020.

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DOUGLAS K. WATKINS  
COL, JA, USA  
Military Judge