

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	ACM 37145
Appellee)	
)	
v.)	
)	ORDER
Senior Airman (E-4))	
CHRISTOPHER J. GURRY,)	
USAF,)	
Appellant)	Panel No. 1
)	

On 1 December 2008, the United States submitted a Motion to Disqualify Lead Appellate Defense Counsel, requesting that the Court disqualify Jack B. Zimmerman, Esquire (civilian counsel), from serving as appellate defense counsel in this case.

On 13 August 2007, the appellant submitted his assignment of errors in this case alleging, inter alia, that he received ineffective assistance of counsel. Also on 13 August 2007, the appellant filed a motion to attach various affidavits, including an affidavit from an appellate defense paralegal recounting a teleconference between Mr. Zimmerman and the appellant's military trial defense counsel concerning the ineffective assistance of counsel issue.

On 26 September 2008, the United States submitted an affidavit from the appellant's military trial defense counsel.

On 23 October 2008, the appellant submitted an affidavit with e-mail attachments from Mr. Zimmerman which outlined the efforts by Mr. Zimmerman in obtaining an affidavit from the military trial defense counsel concerning the ineffective assistance of counsel issue.

The Air Force Rules of Professional Conduct, Rule 3.7, *Lawyer As Witness*, provides: "A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature of legal services rendered in the case; or (3) disqualification of the lawyer would not work substantial hardship on the client.

This Court finds that the said documents submitted by the appellant were not offered as substantive evidence as to any contested issue in this case and instead pertain to the legal services rendered in this case.

Accordingly, it is by the Court on this 22nd day of December, 2008,

ORDERED:

That the United States' Motion to Disqualify Lead Appellate Defense Counsel is hereby **DENIED**.

FOR THE COURT

OFFICIAL



STEVEN LUCAS, YA-02, DAF
Clerk of the Court