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**U.S. DISTRICT COURT RULES IN FAVOR OF WHISTLEBLOWER, RETIRED
U.S. ARMY LIEUTENANT COLONEL, ROBERT W. RODRIGUEZ**
(*Rodriguez v. Department of Defense*, 14–cv-0101 (D.D.C.))

Washington, D.C., February 28, 2017

On February 15, 2017, the U.S. District Court for the District of Columbia issued a 25-page Memorandum Opinion in favor of Lieutenant Colonel Robert W. Rodriguez, USA (retired), who for years has been attempting to shed light on what court papers call, “a conflicts of interest-plagued and lawless sham of an administrative appeal to the Secretary of Defense process that is mandated by Congress to protect military whistleblowers.”

The whistleblowing occurred 20 years ago. According to one court pleading, Lieutenant Colonel Rodriguez “was initially reprimanded against by his commanding officer who took retaliatory adverse actions in late 1996 and throughout 1997 after [Lieutenant Colonel] Rodriguez had complained about fraudulent accounting for soldiers in the New York Army National Guard, a scandal that later became known as the ‘Ghost Soldier Scandal.’ These reprimands by his commanding officer led to LTC Rodriguez being constructively discharged from the Army, which in turn barred LTC Rodriguez from even being considered for promotion to Colonel.”

According to the February 15, 2017, Court ruling, the Military Whistleblower Protect Act, aka MWPA, “is a statute designed ‘to provide a degree of protection [from retaliation] to military personnel who report information on improper or illegal activities by other military personnel’ Generally speaking, an aggrieved veteran may complain of retaliatory conduct to the Inspector General (‘IG’), *see* 10 U.S.C. § 1034(c), and if the IG’s investigation substantiates the allegation, the veteran can petition the ABCMR ‘to correct an error or remove an injustice’ from his or her military personnel record, Rodriguez submitted such a petition to the ABCMR in October of 2009, and in 2010, his request for relief was substantially denied. . . . Rodriguez then launched an administrative appeal from the ABCMR’s denial, and Pasquale Tamburrino—the then-Chief of Staff of DOD’s Office of the Under Secretary of Defense, Personnel and Readiness (‘OUSDP&R’)—reviewed his appeal in April of 2013, affirming the agency’s denial. . . . Rodriguez then sought to attack the ABCMR’s denial of relief on two fronts. First, on May 31,

2013, Rodriguez filed a petition for judicial review of that agency decision in the D.C. Circuit. . . . Second, on October 8, 2013, Rodriguez filed two FOIA request letters with DOD's FOIA Office, seeking records related to his administrative appeal."

The District Court on February 15, 2017, ruled that, "it was manifestly unreasonable for DOD to decide to respond to Rodriguez's two FOIA requests by looking no further than files maintained by the Office of Legal Policy, and even more significant, failing to search *Tamburrino's own office* (including his email database), which Plaintiff specifically noted was the likely place where all of the records regarding Tamburrino's review would be located. . . . All things considered, then, this Court easily finds that DOD unreasonably narrowed its interpretation of Rodriguez's FOIA requests and has failed to justify the limited scope of its search."

Within days of the District Court holding, Schmitz & Socarras LLP filed a "supplemental authority" letter in the U.S. Court of Appeals for the District of Columbia, advising the appellate court that the new District Court ruling supports the description in Lieutenant Colonel Rodriguez' Petitioner's Brief that, "This Petition for Review sheds light on a conflicts of interest-plagued and lawless sham of an administrative appeal to the Secretary of Defense process that is mandated by Congress to protect military whistleblowers such as Petitioner."

SCHMITZ & SOCARRAS LLP was launched in October 2014 by two former D.C. Circuit law clerks, former Department of Defense Inspector General Joseph E. Schmitz and international lawyer Michael P. Socarras, along with a third partner, former U.S. Army Associate General Counsel Dennis D. Kirk. The firm focuses on international transactions, dispute resolution and compliance, particularly in aerospace, defense, financial transactions, and cyber security. In addition to Members of Congress, its clients include U.S. as well as foreign defense and aerospace companies, and Latin American private equity firms and human rights plaintiffs.

"A consensus has emerged that law firms' business model needs to change, and clients are demanding it, but somehow this is not happening -- or at least not fast enough," said partner Michael Socarras. "At SCHMITZ & SOCARRAS our goal is to provide value-based professional services without billing a single hour unless the client insists."

Mr. Schmitz is a graduate of the U.S. Naval Academy and Stanford Law School. Mr. Socarras is a graduate of Brandeis University and Yale Law School. They met while clerking in 1986 for Judge James L. Buckley on the D.C. Circuit. Mr. Schmitz is author of "THE INSPECTOR GENERAL HANDBOOK: FRAUD, WASTE, ABUSE, AND OTHER CONSTITUTIONAL 'ENEMIES, FOREIGN AND DOMESTIC'," published by Center for Security Policy Press in 2013.