

OFFICE OF COMPLIANCE
LA 200, John Adams Building, 110 Second Street, S.E.
Washington, D.C. 20540-1999

SARA J. OURSLER,)	
Complainant,)	
)	
v.)	Case No. 98-SN-24 (CV, FM, RP)
)	
THE OFFICE OF THE UNITED STATES)	
SENATE SERGEANT AT ARMS,)	
Employing Office.)	

Before the Board of Directors: Glen D. Nager, Chair; James N. Adler; Jerry M. Hunter; Virginia A. Seitz, Members

DECISION OF THE BOARD OF DIRECTORS

The Board has before it a Petition for a Writ of Mandamus of the Office of the United States Senate Sergeant at Arms (“SAA”) concerning the refusal of the Hearing Officer to dismiss the above-referenced matter. The Board has carefully reviewed the petition, the materials filed in support of it, and the materials filed in opposition to it. The Board has also carefully reviewed the pertinent orders of the Hearing Officer. Based on this review, the Board denies the petition.

It is settled that “a writ of mandamus is an extraordinary remedy, to be reserved for extraordinary situations” *Gulfstream Aerospace Corp. v. Mayacamus Corp.*, 485 U.S. 271, 289 (1988) (internal citations omitted). Specifically, under the law of the judicial circuit to which we are accountable, “[t]he Petitioner has the burden of establishing that its right to the issuance of the writ is clear and indisputable, and that it lacks adequate alternative means to obtain the relief sought.” *In re Regents of Univ. of Cal.*, 101 F.3d 1386, 1387 (Fed. Cir. 1996) (internal citation omitted), *cert. denied sub nom. Genentech, Inc. v. Regents of Univ. of Cal.*, 117 S. Ct. 1484 (1997). A writ may properly issue “only when there has been a clear abuse of discretion or usurpation of judicial authority” *id.*, and even then the grant of the petition is a matter for sound discretion, *see Kerr v. United States Dist. Court*, 426 U.S. 394, 403 (1976). In the case of a jurisdictional ruling, among other things, the challenged action must be “so plainly wrong as to indicate failure to comprehend or refusal to be guided by unambiguous provisions of a statute or settled common law doctrine. If a rational and substantial legal argument can be made in support of the questionable jurisdictional ruling, the case is not appropriate for mandamus” *Formica Corp v. Lefkowitz*, 590 F.2d 915, 921, (C.C.P.A.), *cert. denied*, 442 U.S. 917 (1979) (quoting *American Airlines, Inc. v. Forman*, 204 F.2d 230, 232 (3d. Cir.), *cert. denied*, 346 U.S. 806 (1953)); *accord In re Cordis Corp.*, 769 F.2d 733, 737 (Fed. Cir. 1985).

Under these standards, it is plain that there is no cause here for the issuance of a writ.

The Hearing Officer has written a thoughtful explication of his reasons for retaining jurisdiction over this matter; and, while we have no occasion at this time to address further the substance of the underlying jurisdictional dispute, the Hearing Officer's reasons are self-evidently anything but irrational or insubstantial. Moreover, our conclusion that "rational and substantial legal argument[s]" can be made in support of the jurisdictional conclusion reached by the Hearing Officer is buttressed both by the substantive arguments advanced on behalf of the Executive Director of the Office of Compliance, an officer with significant and explicit statutory responsibilities under the Congressional Accountability Act ("CAA"), and by the decision of the Executive Director to file an *amicus* brief in order to bring to the attention of the Hearing Officer the importance of the issues here to the enforcement of the CAA. In addition, because a writ of mandamus is addressed to the sound discretion of the Board, we find it significant that the Hearing Officer relied at least in part on current procedural rules that were expressly approved by this Board. Finally, it appears that the matters of concern to the SAA can be adequately protected on appeal. *See Alaska v. United States*, 64 F.3d 1352 (9th Cir. 1995); *Pullman Constr. Indus. v. United States*, 23 F.3d 1166 (7th Cir. 1994).

The CAA contemplates a streamlined, expeditious administrative dispute resolution process. The Hearing Officer's orders reflect a concern with the delay resulting from the barrage of motions already filed by the SAA. While there is undoubtedly a role in this process for appropriate writs, the expedited dispute resolution process contemplated by the CAA would be further frustrated by the granting of this petition for a writ of mandamus.

For the forgoing reasons, the Board declines to exercise its discretion to issue a writ of mandamus. The petition is DENIED.¹

¹ The Board also has before it the *Motion of the Office of the United States Senate Sergeant at Arms to Disqualify the General Counsel of the Office of Compliance From Advising or Representing the Board of Directors for the Office of Compliance in Their Consideration of the SAA's Petition for Writ of Mandamus*. Since the General Counsel has not sought nor been asked to play any such role, and since he has not done so, the motion is denied as moot.