

UNITED STATES MARINE CORPS  
WESTERN JUDICIAL CIRCUIT  
NAVY-MARINE CORPS TRIAL JUDICIARY

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UNITED STATES	)	GENERAL COURT-MARTIAL
	)	
v.	)	
	)	GOVERNMENT MOTION FOR
Pietro P. Scarselli	)	APPROPRIATE RELIEF
XXX XX 4846	)	
Major	)	
U.S. Marine Corps	)	25 June 10
	)	

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1. **Nature of Motion** This is the Government's motion to continue the 12 July 2010 scheduled trial dates until 13 September 2010.

2. **Summary of Facts**

- a. On 7 January 2010, the Accused was arraigned, and dates for trial were docketed.
- b. On 29 March 2010, the first 39(a) motions hearing was conducted.
- c. On 17 May 2010, the second 39(a) motions hearing was conducted.
- d. On 16 June 2010, a third 39(a) motions hearing was conducted to resolve outstanding motions issues.
- e. On 23 June 2010, the administration section of Headquarters Battalion aboard the Marine Corps Air Ground Combat Center indicated that they would be unable to provide sufficient officer members to satisfy the minimum 10 Lieutenant Colonels or above that the Government believes will be necessary to ensure the five member quorum will not be broken.
- f. On 25 June 2010, the G-1 shop indicated that due to operational tempo, the three units aboard the Combat Center with the most field grade officers would be unable to support the request for officer members for the scheduled trial dates.

g. Government requests a continuance as the currently docketed dates are unsupportable: the subject trial is set to take place 12-23 July 2010.

### 3. Discussion

Article 40, UCMJ allows a military judge to grant a continuance to any party, for such time, and as often as may appear to be just, for reasonable cause. Reasons for a continuance to be granted include: insufficient time to prepare for trial; unavailability of an essential witness; the illness of an accused, counsel, military judge, or member. R.C.M. 906(b)(1) at Discussion. The military judge must be convinced that if a continuance is not granted, the substantial rights of the moving party would be prejudiced. United States v. Perry, 1996 CCA Lexis 472, 6 (N-M.C.C.A. July 1, 1996). A military judge should exercise caution before denying a continuance, where one of the parties might be denied an essential service. United States v. Allen, 31 M.J. 572, 620 (N-M.C.M.R. 1990). Thus, a military judge should liberally grant motions for delay as long as it is clear that a good cause showing has been made. *Id.*

The Government requests the Court consider the logistical difficulties associated with a trial of this magnitude. The Accused in the instant case is a Lieutenant Colonel select with a date of rank of 1 February 2005. In accordance with established caselaw, prospective members of the court-martial must be senior to the Accused. This effectively rules out the vast majority of Majors from taking part in these proceedings, leaving a pool of prospective Lieutenant Colonels and Colonels as members. In accordance with Rule for Court-Martial 501, a minimum of five members must sit for a general court-martial. In order to reach quorum, prospective members will be subjected to voir dire in accordance with Rule for Court-Martial 912 prior to assembly. The Government believes that in the interests of justice, specifically including the upcoming rulings by this Court in regards to the appearance of unlawful command influence as well as the

media attention that this case has received, that all prospective members be subjected to expansive questioning prior to being seated. This will ensure that the Accused be given a fair trial, and that the seated members be free from outside influence and persuasion. (Specifically any preconceived ideas or formulations of the charges or facts based upon the two recent articles in the Marine Times.) This being the case, the Government believes that a minimum of 10 prospective members be identified to ensure minimal risk of breaking quorum and additional delay to the trial. This is especially important given the billets held by senior field grade officers as well as the difficulties associated with a defense counsel who is not geographically located on the West Coast.

The administration and personnel section of the Combat Center (G-1), has been briefed and their advice sought on the ability of the Combat Center to support a two week trial with this many members. They have unequivocally indicated that they will be unable to support the required minimum number for the currently docketed dates due to the high operational tempo of the sub-units (TTECG, MCTOG and ATG per enclosure 1) who have the most eligible field grade officers. (Enclosure 2). This operational tempo diminishes significantly after 10 September 2010, and both the G-1 and Chief of Staff have indicated that the Combat Center will be able to provide sufficient members at that time. Although other sources of officers are available, upon brief investigation, many of these sources are potentially tainted by contacts with the Accused, or Marines who are either witnesses or have been adjudicated in relation to the Inspector General investigation which was the catalyst for these cases. (For example, Colonel T. Green who is a Government witness, the former commanding officer of Major Scarselli while Col. Green was the G-7, and is now the officer in charge of Mojave Viper Support Detachment, a large subgroup of TTECG.) Granting this continuance would allow the Government to select

members with no connection to the case, and provide sufficient time to make adjustments after the members questionnaires are returned and provided to defense should possible conflicts manifest.

The delay in proceedings would further serve to ensure that the remedial measures taken by the government to ameliorate any possible appearance of unlawful command influence have greatest effect. The letter from the Commanding General of MCAGCC, Twentynine Palms directed to the Marines of the Provost Marshal's Office dated 21 June 2010 which was read and explained to the Marines by Major D. Jones, the current Provost Marshal, will ensure that the Marines know that the Commanding General, the Commanding Officer of Headquarters Battalion, and the Provost Marshal all expect prospective witnesses to testify truthfully in the subject proceedings and that they have nothing to fear in terms of retribution or retaliation. In addition, the source of possible apparent UCI, Master Sergeant Scamman, has been removed from PMO, placed on PTAD for a week, and on 28 June will begin a period of leave approved for 30 days. He is currently also the subject of a Military Protective Order requiring him to avoid contact with any other Marines from PMO. While these measures are all effective already, allowing additional time to assuage the concerns that Marines may have concerning testimony at trial will further bolster the Government's ability to ensure that all witnesses be available and willing to testify.

In the interests of justice, and to ensure that adequate members are identified to proceed from voir dire straight into trial without delay, the Government requests a continuance on this matter until any time after 10 September 2010.

#### 4. **Evidence and Burden of Proof.**


The burden is on the moving party to demonstrate by a preponderance of the evidence.

5. **Relief Requested.**

The government respectfully requests that this Court continue the trial until 10 September 2010, and that dates be arrived upon at an 802 conference with defense counsel. In conversation, defense counsel has indicated that he is currently scheduled to be in trial the week preceding 13 September, and will likely have another contested case the week following. Unfortunately no date appears to be clear immediately thereafter. Government is willing to agree to any dates after 10 September, with the preference for sooner rather than later.

6. **Oral Argument.** The government desires to make oral argument on this motion.


Respectfully submitted,

  
D. GILINSKY  
Captain, USMC  
Trial Counsel

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CERTIFICATE OF SERVICE

A true copy of this motion was served on Defense Counsel on this 25 day of June, 2010.

  
D. GILINSKY  
Captain, USMC  
Trial Counsel