

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

---

UNITED STATES	)	GENERAL COURT-MARTIAL
	)	
v.	)	
	)	
Pietro P. Scarselli	)	DEFENSE RESPONSE IN OPPOSITION
Major	)	TO GOVERNMENT MOTION FOR
U.S. Marine Corps	)	APPROPRIATE RELIEF: Government Trial
	)	Continuance Motion
	)	
	)	

---

26 June 2010

1. **Nature of Motion** This is the Defense’s opposition brief asking the Court to deny the Government’s motion to continue the 12 July 2010 scheduled trial until 13 September 2010.

2. **Summary of Facts**

- a. The accused was arraigned on 7 January 2010.
- b. Per the docketing Judge’s order, trial in this case was to be held on 17 May 2010.
- c. After some continuances of 39a motion hearings being requested by the trial counsel (and granted), trial in this case was rescheduled for 12 July 2010.
- d. Now, the trial counsel wishes to reschedule the trial until mid-September 2010 to ensure that they have enough members.

3. **Discussion**

CAAF holds that the standard of review of a military judge’s decision to deny a continuance is abuse of discretion; there is an abuse of discretion where the reasons or rulings of the military judge are clearly untenable and deprive a party of a substantial right such as to amount to a denial of justice. See United States v. Weisbeck, 50 MJ 461 (CAAF 1999). Unlike in Weisbeck, all the parties, including the Military Judge, agreed to the earlier trial date of 17 May 2010 and then to the new trial date of 12 July 2010. Now, Maj Scarselli would possibly incur hundreds in expenses in additional legal fees and months of being under a cloud of

accusation if the trial were to be continued again per the Government's request. Further, the Government has no interest in justice in asking for the continuance, just delay. This is because all of the pertinent ranked members needed by the trial counsel are readily available at MCRD, Camp Pendleton, Yuma, Miramar or elsewhere if they are not at 29 Palms, CA. The Government could have locked on the needed members months ago, that they did not should not be a burden carried by Maj Scarselli.

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

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

5. **Relief Requested.**

The defense respectfully requests that this Court deny the Government motion to continue the trial and that trial proceed according to the 12 July 2010 date set and agreed to by the parties.

6. **Oral Argument.** The defense does not desire to make oral argument on this motion. A true copy of this document was served on Trial Counsel on the date listed in the caption above.

Respectfully submitted,

/s/

C. P. HUR  
Defense Counsel