

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

UNITED STATES)	
)	GENERAL COURT MARTIAL
v.)	
)	Defense Motion for Appropriate Relief
FRANK D. WUTERICH)	(Continuance)
XXX XX 3312)	
Staff Sergeant)	7 October 2011
U.S. Marine Corps)	

1. Nature of Motion. Pursuant to R.C.M. 906(b)(1) the defense hereby requests a continuance of the trial currently scheduled to commence on November 30, 2011, until January 4, 2011. The delay is necessary because the November 30 creates an exceptional hardship for the defense team that cannot be remedied.

2. Facts. The defense is in ongoing preparations for this trial and expects to be ready by November 30, 2011. Due to circumstances beyond the Defense' control, however, the November 30 trial date raises a hardship that will result in substantial difficulties for the defense team. When the November 30 date was established the law firm of Puckett and Faraj had four full time lawyers and two staff. Recently one attorney and one staff member left the firm for other employment. Another attorney gave birth on Sep 29 of this year and is on maternity leave. She is expected to remain on maternity leave through December. Our other staff member, Sgt Bethany Trujillo, is a reserve Marine Corps NCO who has received orders that activate her for this case. The loss of two attorneys and two staff, as well as Mr. Faraj and Mr. Puckett will leave our office without any personnel for the entire period of the trial if it were to be take place November 30. We will literally have to close our doors for the entire month of the trial. No one will answer the phones. Current clients will be unable to reach anyone with matters or concerns.

New clients will not have their inquiries responded to. We will not be able to close-out our accounting books on time as we are required to by the IRS for end of the year tax purposes nor submit financial reports to our accountants on time.

A January date is tenable because our attorney on maternity leave will be back and we are currently interviewing candidates to staff the office in our absence. But even if we were to hire new staff before December, the new staff member will have to be supervised by an attorney. Going to trial on the date currently scheduled will, therefore, create a substantial hardship for the attorneys representing SSgt Wuterich and certainly SSgt Wuterich.

3. Discussion. R.C.M. 906(b)(1) gives the military judge discretion to grant a continuance upon motion of one of the parties. *Id.* “The military judge *should*, upon a showing of reasonable cause grant a continuance to any party for as long and as often as is just.” *Id.* Discussion. (Emphasis added). A judge’s decision to deny a request for a continuance is abuse of discretion. It is an abuse of discretion where the decision to deny a continuance results in a loss of a substantial right to a party. *United States v. Weisbeck*, 50 M.J. 461 (C.A.A.F. 1999). This continuance is not being requested for the mere purpose of delay or to achieve a tactical advantage. It is intended to relieve a substantial hardship to the defense if the trial were to be held on November 30. It is well known by now that SSgt Wuterich has not been required to pay for his representation. Accordingly, the expense incurred as a result of his defending must be earned through other work. A November 30 would shut our firm down for the three weeks of the trial and neglect all other clients of the firm.

The defense agrees that all delay as a result of the granting of this motion shall be excludable.

Defense counsel has conferred with trial counsel regarding this motion and has obtained consent for the requested delay.

WHEREFORE the defense respectfully requests that this motion to continue the trial until January 4 is granted and that the period of delay be excludable.

4. Evidence. None
5. Argument. The defense does not request argument on this motion.

Respectfully submitted,

By: /S/

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7 October 2011
Date

CERTIFICATE OF SERVICE

I certify that an electronic copy of this document was served upon government counsel on

7 October 2011.

By: /S/

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Date