

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

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UNITED STATES	)	
	)	GENERAL COURT MARTIAL
v.	)	
	)	Defense Motion for Appropriate Relief
FRANK D. WUTERICH	)	(Continuance)
XXX XX 3312	)	
Staff Sergeant	)	2 Sepetember 2010
U.S. Marine Corps	)	

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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 September 15, 2010, until September 20, 2010. The delay is necessary because the defense requires additional time to prepare its case.

2. Facts. The defense incorporates by reference the facts set forth in its witness production motion of August 2, 2010.

On August 26 and 27 2010, an Article 39a session was held in this case to hear various motions. Court and the parties agreed to be ready to commence member selection on September 15, 2010. The court also set a date of September 13, 2010, to continue to hear evidence on a motion before the court and to handle additional outstanding pretrial matters. The defense has been preparing its case and continues to do so. During the week August 30, 2010, the accused's newly assigned detailed counsel traveled to the East Coast to work on another matter in a previously scheduled hearing. The defense in this case continues to struggle with the availability of counsel and support personnel. The loss of the currently detailed counsel for a week, two weeks before the scheduled trial date, has slowed the defense' ability to prepare to be ready for trial on September 15. The defense has also been unable to obtain the support of its previously

assigned legal clerk who was tasked with maintaining the case file at the defense building aboard Camp Pendleton when the two previously detailed defense counsel were discharged from active duty. The loss of the current detailed counsel for a week has hindered coordinating reassignment of the legal clerk to the defense team and hinders the defense team's ability to access and organize the case file.

The defense harbors serious doubts about its ability to be ready to start the trial on September 15. The handful of extra days requested will allow the defense to complete its preparations. This is not a request to continue the 39a scheduled for September 13.

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). The right to present a defense is a substantial right. *United States v. Tefteau*, 58 M.J. 62 (C.A.A.F. 2003); *United States v. Dimberio*, 56 M.J. 224 (C.A.A.F. 2001).

Loss of the current detailed counsel, the delay in reassignment of the legal clerk and access to files, and the recent loss of LtCol Vokey, has slowed the defense' ability to press ahead with preparations. A lack of preparation will most certainly hinder the defense' ability to present a defense. A delay of a few days will, therefore, assist the defense in continuing to prepare to present a defense. Additionally, a delay is also merited because the court has a case dispositive motion before it that may require additional time to coordinate certain pretrial actions depending on the court's decision.

4. Evidence. None
5. Relief Requested. A continuance of the trial currently scheduled for September 15 until 20 September, 2010.
6. Argument. The defense does not request argument on this motion.

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26 August 2010  
Date

**CERTIFICATE OF SERVICE**

I certify that an electronic copy of this document was served upon government counsel on  
2 September 2010.

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2 September 2010  
Date