

**NORTHERN JUDICIAL CIRCUIT  
NAVY-MARINE CORPS TRIAL JUDICIARY  
GENERAL COURT-MARTIAL**

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UNITED STATES	)	
	)	GENERAL COURT MARTIAL
v.	)	
	)	Defense Motion for Appropriate Relief
JAMES ROWE	)	(Continuance)
XXX XX	)	
CAPTAIN	)	26 October 2011
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 November 01, 2011, until November 14 or November 28, 2011, or March 05, 2012. The delay is necessary because an exculpatory witness to the Article 120 charge continues to be available. The Government has deposed this witness and has agreed to immunize him. The grant of immunity is not yet completed. Additionally, when the dates were set by this Court. Counsel for both sides agreed that because civilian defense counsel was unavailable and his schedule unknown, the Government would agree to a reasonable modification of the trial schedule. The defense has sought consent from the Government to continue this trial until November 14 or November 28. Such consent has not been forthcoming.
  
2. Facts. On August 29, 2011, Capt Rowe was arraigned. On that date Capt Rowe through counsel lodged objections to the proposed trial dates because Capt Rowe’s civilian counsel –Mr. Haytham Faraj- was unavailable. The reason civilian counsel was not available is because the arraignment date was set without coordination with the defense and accordingly civilian defense counsel could not be present due to a conflict. Defense counsel agreed to not challenge the arraignment date and to go forward with only detailed counsel present. At the arraignment, Capt

Rowe waived the appearance of civilian defense counsel but did want to agree to the proposed trial dates without first checking to make sure his civilian defense counsel is available for the proposed trial dates.

During the course of pretrial preparations both Government and the Defense identified the materiality and relevance of the testimony of Mr. Jeremy Owens. The Government, therefore, deposed Mr. Owens and has been working on immunizing him. Mr. Owens is a witness with verifiable exculpatory evidence to the Article 120 charge. Mr. Owens was deposed by the Government without coordination with or proper notice to the defense or an opportunity to have Capt Rowe's defense counsel examine Mr. Owens. Capt Rowe's military counsel was present but did not ask any questions. The defense has been notified by the Government that the Government is seeking a grant of immunity for Mr. Owens from the Attorney General. That grant of immunity has not been granted yet. On October 19, 2011, with the trial dates looming, Defense counsel engaged trial counsel in an attempt to reset the trial dates. Trial counsel could not agree. On October 24 and 25, defense and trial counsel again discussed the issue of continuance but could not agree. At this point, the Defense is not prepared or ready to begin trial on November 1, 2011, the defense is entitled to the exculpatory testimony of Mr. Owens and the right to prepare a defense case once it is aware of the testimony Mr. Owens will provide that he has not yet provided. The Government agrees that his testimony is relevant material and necessary. They have agreed to immunize him and produce him. He has agreed to testify so long as he is immunized. A reasonable continuance until he is produced and the defense has had an opportunity to speak with him is appropriate and consistent with the Rules for Court-Martial and case law.

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. A continuance is being requested because at the very outset of this case, the defense was denied an opportunity to have any input on the scheduling of this case which interfered with a substantial right of Capt Rowe to have his civilian defense counsel present at the arraignment and later at a deposition of the most important defense witness in this case. Then, despite assurances that the Government would cooperate with the defense on the setting of dates, such cooperation was not forthcoming when the defense requested it. On November 1, the defense will simply not be prepared to proceed because Capt Rowe is entitled to have Mr. Owens produced and he is entitled to have his defense team prepare his defense in light of Mr. Owen’s testimony. The delay requested is reasonable and does not prejudice the Government’s ability to put on a case. This is the first continuance requested by the defense. The defense agrees that all delay as a result of the granting of this motion shall be excludable.

WHEREFORE the defense respectfully requests that this motion to continue the trial until November 14 or 28, 2011 or March 05, 2012 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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26 October 2011  
Date

**CERTIFICATE OF SERVICE**

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

26 October 2011.

By:       /S/      

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