

UNCLASSIFIED//FOR PUBLIC RELEASE
**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

AE051A

Defense Motion to Continue
the 21 September 2015 Hearing

14 September 2015

1. Timeliness: This motion is filed within the timeframe established by Rule for Military Commission (R.M.C.) 906 and is timely pursuant to Military Commissions Trial Judiciary Rule of Court (R.C.) 3.7.c.(1).

2. Relief Sought: The defense requests that the Commission reschedule the scheduled 21 September 2015 hearings and continue the hearing until a later date so that the defense may attempt to re-establish and preserve the attorney-client relationship with Mr. Hadi al Iraqi.

3. Burden of Proof: The defense bears the burden, by a preponderance of the evidence. *See* R.M.C. 906(b)(1).

4. Facts: In AE049I the Commission found that there was no current attorney client relationship between Lt Col Sean Gleason and Mr. Hadi al Iraqi, and that there was no conflict of interest between Mr. Hadi al Iraqi and his currently detailed defense counsel. The Commission ordered the defense to inform Mr. Hadi al Iraqi of its holding, and to inform the Commission

whether or not Mr. Hadi al Iraqi had decided to restore current defense counsel to full representational duties by 11 September 2015. The defense did so in AE049J.

5. Law and Argument :

Rule for Military Commission 906 provides in relevant part:

(a) *In general.* A motion for appropriate relief is a request for a ruling to cure a defect which deprives a party of a right or hinders a party from preparing for trial or presenting its case.

(b) *Grounds for appropriate relief.* The following may be requested by motion for appropriate relief. This list is not exclusive:

(1) Continuances. A continuance may be granted only by the military judge.

The Discussion section of this rule further provides that:

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. Whether a request for a continuance should be granted is a matter within the discretion of the military judge.

At this time, the Military Commissions Defense Office is hiring a civilian attorney to independently counsel Mr. Hadi al Iraqi regarding his rights to both representation by military counsel and if Mr Hadi al Iraqi so chooses, to represent him along with military counsel throughout the trial. That simply cannot happen between now and the scheduled 21 September hearing. However, we believe that we will be able to have a civilian counsel for Mr. Hadi al Iraqi prior to the scheduled November hearings.

The Government has previously indicated that they desired to go on the record regarding Mr. Hadi al Iraqi's representation on 21 September 2015 regardless of the contents of the notice provided by the defense in AE049J. We believe this would prejudice the rights of the accused to counsel of his choice, in that he has not had an opportunity to be independently advised and may be forced between a rock and a hard place regarding the way forward – essentially he would be forced to

choose on the spot whether to proceed pro se, request different military counsel, or perhaps boycott the entire proceeding, all without the benefit of his requested independent advice.

Continuing the 21 September 2015 hearing, the docket for which is modest, at best, would serve the interests of justice by allowing Mr. Hadi al Iraqi to be fully advised and in a position to make an intelligent decision regarding his choice of counsel.

6. Oral Argument: The defense does not request oral argument on this motion.

7. Witnesses: none.

8. Conference with Opposing Counsel: We conferenced this motion with the prosecution but did not receive a response by the time of filing, therefore we have marked them as opposing the motion.

9. List of Attachments:
 - A. Certificate of Service

Respectfully Submitted,

//s//
THOMAS F. JASPER, Jr., LtCol, USMC
Detailed Defense Counsel

//s//
ROBERT B. STIRK, Maj, USAF
Assistant Detailed Defense Counsel

/s//
ROBERT T. KINCAID, III, MAJ, USA
Assistant Detailed Defense Counsel

ATTACHMENT A

Filed with TJ
14 September 2015

Appellate Exh bit 051A (al Hadi)
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CERTIFICATE OF SERVICE

I certify that on 14 September 2015, I filed AE051A with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//

ROBERT B. STIRK, Maj, USAF
Assistant Detailed Defense Counsel