

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH MUBARAK
BIN ‘ATTASH, RAMZI BIN AL SHIBH,
ALI ABDUL-AZIZ ALI, MUSTAFA
AHMED ADAM AL HAWSAWI**

AE 006I(WBA)

**Mr. bin ‘Atash’s Request for Excusal
of Detailed Defense Counsel**

22 January 2019

1. **Timeliness:** This motion is timely filed.
2. **Relief Sought:** Capt Brian Brady was detailed to Mr. bin ‘Atash’s Defense Team on 6 June 2016 and filed his appearance before the Military Commission on 20 March 2017. (AE 004W(WBA)). On 3 January 2019, Chief Defense Counsel BGen John Baker determined that Captain Brady was burdened by a conflict of interest with respect to his ongoing representation of Mr. bin ‘Atash and found good cause to warrant his excusal as detailed Defense Counsel. Undersigned Defense Counsel now move for the excusal of Captain Brady, pursuant to RC 4.4(b).
3. **Burden of Proof:** As the moving party, Mr. bin ‘Atash bears the burden of proof on this request.
4. **Facts:**
 - a. Capt Brian Brady was detailed to represent Mr. bin ‘Atash by the Chief Defense Counsel, Military Commissions, on 6 June 2016.
 - b. Capt Brady entered his appearance before the Military Commission at the commencement of the March 2017 pretrial hearings.
 - c. On 3 January 2019, CDC BGen Baker determined that Capt Brady was operating under a conflict of interest in his representation of Mr. bin ‘Atash. Accordingly, BGen Baker found the

existence of good cause and excused Capt Brady as detailed Defense Counsel. R.M.C. 505(d)(2)(B)(ii); 505(f).

d. Mr. bin ‘Atash is currently represented by other counsel, both civilian and military. However, those counsel are also presently conflicted. (AE 615(WBA)).

5. Argument:

R.M.C. 505(d)(2)(B) provides that “[a]fter an attorney-client relationship has been formed between the accused and . . . defense counsel, an authority competent to detail such counsel may excuse or change such counsel only: (i) Upon request of the accused or application for withdrawal by such counsel; or (ii) For other good cause shown on the record.” The Chief Defense Counsel is the authority competent to detail and excuse such counsel. Here, the Chief Defense Counsel has found that Capt Brady, during the course of his representation of Mr. bin ‘Atash, acted under a conflict of interest. This conflict constituted good cause warranting BGen Baker’s removal of Capt Brady from Mr. bin ‘Atash Defense Team. See R.M.C. 505(f).

RC 4.4(b) requires that “[a] defense counsel who has entered an appearance in a Commissions session will not be excused without permission of the Military Judge.” Capt Brady previously entered an appearance before the Military Commission. Therefore, Undersigned Counsel similarly request the excusal of Capt Brady, in accordance with RC 4.4(b), from the Military Judge.

The Rules for Military Commission provide that “[w]hen defense counsel is aware of a potential conflict of interest, counsel should discuss the matter with the accused.” R.M.C. 901(d)(4)(E), Discussion. Undersigned Defense Counsel are aware of their unique obligation to Mr. bin ‘Atash upon learning of a potential conflict of interest: “counsel should discuss the matter with the accused.” R.M.C. 901(d)(4)(E), Discussion. However, undersigned Defense Counsel are

themselves operating under a conflict of interest and cannot “discuss the matter with the accused” or offer advice and counsel that is otherwise not conflicted. (AE 615(WBA)).

Undersigned conflicted Defense Counsel consent to the excusal of Capt Brady, as he also provided conflicted representation to Mr. bin ‘Atash. However, in the absence of advice of counsel, Mr. bin ‘Atash has not authorized the release of Capt Brady.

6. Oral Argument: Counsel for Mr. bin ‘Atash do not request oral argument on this request.

7. Witnesses: None.

8. Conference with Opposing Counsel: The Prosecution’s position is as follows:

“As set forth in 4.4(b) of the Rules of Court, a detailed military defense counsel (such as Captain Brady) who has entered an appearance in a Commissions session will not be excused without permission of the Military Judge. (See also RC 4.2.a. and RC 4.2.b.). To the extent the Defense seeks the Military Judge's permission for CAPT Brady's permanent excusal, the Prosecution does not oppose the Defense filing the motion, but reserves the right to challenge once it learns the grounds for the excusal; including whether Mr. Bin 'Attash consents. The Prosecution recognizes only the authority of the Military Judge to excuse counsel who have made an appearance, so to the extent that the Defense motion seeks to assert the Chief Defense Counsel's authority to excuse Captain Brady, the Prosecution opposes.”

9. Attachments:

A. Certificate of Service

10. Signatures:

/s/

CHERYL T. BORMANN
Learned Counsel

/s/

EDWIN A. PERRY
Detailed Defense Counsel

/s/

WILLIAM R. MONTROSS, JR.
Detailed Defense Counsel

/s/

MATTHEW H. SEEGER
MAJ, U.S. Army
Detailed Military Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 22nd day of January 2019, I filed with the Trial Judiciary via email, AE 006I(WBA), Mr. bin 'Atash's Request for Excusal of Detailed Defense Counsel, and provided copies on all counsel of record.

//s//

CHERYL T. BORMANN

Learned Counsel