

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 006K</p> <p>RULING</p> <p>Defense Request For Excusal of Detailed Military Defense Counsel</p> <p>25 January 2019</p>
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1. Counsel for Mr. bin ‘Attash moved¹ to excuse Detailed Military Defense Counsel, Captain Brian Brady, USAF, from further representation of Mr. bin ‘Attash pursuant to Military Commissions Rule of Court (RC) 4.4(b) (1 September 2016). Captain Brady was detailed to represent Mr. bin ‘Attash on 6 June 2016² and entered an appearance before the Commission at the commencement of the March 2017 hearings.³ In support of the motion, Counsel for Mr. bin ‘Attash assert (1) the Chief Defense Counsel (CDC) on 3 January 2019, determined that Captain Brady was operating under a conflict of interest with respect to his ongoing representation of Mr. bin ‘Attash and found good cause to warrant his excusal; and (2) Counsel for Mr. bin ‘Attash who are signatories to the motion (Ms. Cheryl T. Bormann, Learned Counsel, Major Matthew H. Seeger, Detailed Military Defense Counsel and Messrs. Edwin A. Perry and William R., Montross, Jr., Detailed Defense Counsel) agree that Captain Brady has a conflict of interest and consent to his excusal from further representation of Mr. bin ‘Attash.⁴ Counsel for

¹ AE 006I (WBA), Mr. bin ‘Atash’s Request for Excusal of Detailed Defense Counsel, filed 22 January 2019. Although styled as a request, the Commission considers this filing to be a motion requesting relief.

² AE 004W (WBA), Mr. bin ‘Atash’s Notice of Detailing of Assistant Defense Counsel, filed 6 June 2016.

³ Unofficial/Unauthenticated Transcript of the *U.S. v. Khalid Shaikh Mohammad, et al.* Motions Hearing Dated 20 March 2017 from 8:59 A.M. to 10:17 A.M. at pp. 14604-14605.

⁴ The Government reserved the right to challenge the motion upon learning of the grounds for excusal and whether or not Mr. bin ‘Attash consents to the excusal. AE 006I (WBA) at 8.

Mr. bin ‘Attash have not advised their client on the issue nor sought his consent for Captain Brady’s excusal.

2. Counsel for Mr. bin ‘Attash did not provide the Commission with the factual basis for the conflict of interest found by the CDC. Thus, the Commission has insufficient information to determine whether there is good cause shown on the record to excuse Captain Brady.

3. Ruling.

a. The motion is **GRANTED IN PART**. Captain Brady is excused from the Commission hearings scheduled to take place 28 January – 1 February 2019.

b. The Commission **DEFERS** ruling on whether there is good cause to permanently excuse Captain Brady until after resolution of the AE 615 series and the Defense provides the Commission with the factual basis for the CDC’s determination that Captain Brady has a conflict of interest.

4. **Order.** Not later than **7 February 2019**, Counsel for Mr. bin ‘Attash will file with the Commission the factual basis for the CDC’s determination. The filing may be *ex parte* and under seal.

So **ORDERED** this 25th day of January, 2019.

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K. A. PARRELLA
Colonel, U. S. Marine Corps
Military Judge