

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY

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 615F(WBA)

Mr. bin 'Atash's Notice of Conflict Affecting
Representation of Mr. bin 'Atash's Interests
Pursuant to AE 530(GOV)

17 January 2019

1. **Timeliness:** This Notice is timely filed.

2. **Facts:**

a. On 2 February 2018, the Commission issued AE 530LL(ORD) finding that "the Commission will not consider the return of the individual seized laptops of Messrs. Mohammad, Ali, and bin 'Atash unless consent is given for a forensic examination of each of the Accused's laptop computer by the Government approved walled off forensic team." (AE 530LL(ORD) at 6).

b. On 14 March 2018, Defense Counsel for Mr. bin 'Atash advised the Commission that Mr. bin 'Atash would consent to the forensic evaluation of the laptop in question while maintaining the right for Defense Counsel, accompanied by Defense Information Technology personnel, to observe the evaluation, ask questions, and assert privilege during the examination. (AE 530PP(WBA)).

c. Beginning in August 2018 and continuing into December 2018, members of Mr. bin 'Atash's Defense Team observed the forensic evaluation on four separate dates. The forensic evaluation is not yet complete and additional dates must be scheduled with the examiner to complete the evaluation.

d. On 20 December 2018, Defense Counsel for Mr. bin 'Atash learned of FBI investigation into Defense Counsel and Defense Team actions performed as part of Mr. bin 'Atash's

representation. (AE 615(WBA) at 13-16).

e. Defense Counsel for Mr. bin 'Atash possess no information pertaining to why and what the FBI is investigating related to their representation of Mr. bin 'Atash. Despite filing AE 615(WBA) on 9 January 2019 and advising the Commission and the Special Review Team of the existence of the potential and/or actual conflict, no information about the investigation has been provided to Counsel. This Notice specifically incorporates herein the information detailed in Section 5 "Facts" of AE 615(WBA).

f. Because Defense Counsel for Mr. bin 'Atash are afraid that the evaluation of Mr. bin 'Atash's laptop is part of the FBI investigation into Mr. bin 'Atash's defense team, Defense Counsel presently decline to participate any further in the laptop evaluation ordered under AE 530LL because it might subject them to further law enforcement scrutiny, criminal prosecution, or loss of security clearance.

g. Until Mr. bin 'Atash's Defense Counsel are assured that they are no longer subject to law enforcement or security clearance investigation, Counsel will not represent Mr. bin 'Atash's interests in the forensic evaluation of his laptop.

h. As of the date of this Notice, Mr. bin 'Atash is represented by Ms. Cheryl T. Bormann (Learned Counsel), Mr. William J. Montross, Jr. (Detailed Defense Counsel), Mr. Edwin A. Perry (Detailed Defense Counsel), and Major Matthew H. Seeger (Military Counsel) as counsel of record. Counsel are also assisted by Capt Simon Caine, an uncleared military counsel, who was detailed to the defense team representing Mr. bin 'Atash in September 2018. Counsel intend to file a motion to excuse Capt Brian Brady as counsel of record in the coming days.

3. Attachments:

A. Certificate of Service

4. Signatures:

/s/
CHERYL T. BORMANN
Learned Counsel

/s/
EDWIN A. PERRY
Detailed Defense Counsel

/s/
MATTHEW H. SEEGER
Major, USA
Detailed Military Counsel

/s/
WILLIAM R. MONTROSS, Jr.
Detailed Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on 17 January 2019, I electronically filed by email with the Trial Judiciary, AE 615F(WBA), Mr. bin 'Atash's Notice of Conflict Affecting Representation of Mr. bin 'Atash's Interests Pursuant to AE 530(GOV), and served a copy of the attached motion on all counsel of record.

/s/

CHERYL T. BORMANN
Learned Counsel