

**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 619H (RBS)

Mr. Bin al Shibh's Motion to Permit the
Absence of Detailed Defense Counsel in
Accordance with R.M.C. 805(c)

14 March 2019

- 1. Timeliness:** This motion is timely filed.
- 2. Relief Sought:** Mr. Bin al Shibh requests permission from the Commission for Lieutenant Mishael A. Danielson to be absent from the hearings scheduled from 25-29 March 2019.
- 3. Burden of Proof:** The Defense bears the burden of persuasion and the standard of proof is a preponderance of the evidence.¹
- 4. Facts:**

a. The next Military Commission hearing is scheduled for 25-29 March 2019.²

b. LT Danielson is requesting to be absent from the upcoming hearings. LT Danielson recently transitioned off active duty and is currently awaiting active duty orders to resume his representation of Mr. Bin al Shibh as an activated Naval Reservist. He has been approved for a

¹ R.M.C. 805(c)(1)

² See AE 578F (ORD) at 2

reserve officer position, but he must be “gained” into a selected reserve status. The request for this was submitted on March 2, 2019 and may take between three and four weeks.

c. Learned Counsel, James Harrington, will be present on behalf of Mr. Bin al Shibh for the duration of the hearings. Additionally, Mr. Wyatt Feeler and Captain John M. Balouziyeh, United States Army Reserve, will be entering onto the record as detailed defense counsel as noticed in AE 004GG (RBS) (filed 12 March 2019) and AE 004HH (RBS) (filed 13 March 2019), respectively. Both will be present at the March hearings.

d. Defense counsel have consulted with Mr. Bin al Shibh regarding this motion, and Mr. Bin al Shibh has no objection.

4. Law and Argument:

R.M.C. 805(c) states that, “[a]s long as at least one qualified counsel for each party is present, other counsel for each party may be absent from a military commission session with the permission of the military judge.” Defense counsel who have entered an appearance in a specific case must attend all sessions of the case before the Commission. R.C. 4.3. The Military Judge may grant a defense counsel’s motion to be absent from a particular session with an on-the-record waiver of the presence of counsel. *See* R.C. 4.3(b)(1).

On 1 March 2019, LT Danielson transitioned from active duty service in the United States Navy and entered the United States Naval Reserve. LT Danielson is presently awaiting the issuance of active duty orders to continue his service as detailed defense counsel for Mr. Bin al Shibh’s defense team. At the request of Mr. Bin al Shibh and in agreement with the Chief Defense Counsel (CDC), Washington Headquarters Service (WHS), and Learned Counsel, LT Danielson

remains on the record as a detailed defense counsel and read into the applicable national security programs pending the issuance of his active duty orders. Mr. Bin al Shibh consents to the absence of LT Danielson from the March 2019 hearings. Consistent with R.M.C. 805(c), Mr. Bin al Shibh will have his Learned Counsel, Mr. James P. Harrington, present as representation for the duration of the hearing. Additionally, Mr. Wyatt A. Feeler and CPT John M. Balouziyeh have filed Notices of Detailing and Appearance as Detailed Defense Counsel for the March 2019 hearing.

5. Conference with Opposing Counsel: To the extent LT Danielson's absence is with the consent of Mr. Bin al Shibh, the Prosecution does not oppose.

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

7. Attachments:

A. Certificate of Service

Respectfully submitted,

//s//
JAMES P. HARRINGTON
Learned Counsel

//s//
ALAINA M. WICHNER
Defense Counsel

//s//
MISHAEL A. DANIELSON, LT, USN
Defense Counsel

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on 14 March 2019, I electronically filed the foregoing motion with the Trial Judiciary and served it on all counsel of record by e-mail.

//s//

JAMES P. HARRINGTON
Learned Counsel