

**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 624C (RBS)

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

16 April 2019

1. Timeliness: This motion is timely filed.

2. Relief Sought: Mr. Bin al Shibh requests permission from the Commission for Ms. Alaina Wichner and Lieutenant Mishael Danielson to be absent from the hearings scheduled from 29 April—3 May 2019.

3. Burden of Proof: The Defense bears the burden of persuasion and the standard of proof is a preponderance of the evidence. R.M.C. 805(c)(1).

4. Facts:

a. The next Military Commission hearing is scheduled for 29 April—3 May 2019. *See* AE 578F (ORD).

b. On 13 February 2019, Mr. Bin al Shibh consented to Ms. Wichner's excusal as his defense counsel from this case. Ms. Wichner is completing administrative procedures in the National Capital Region to finalize her departure from the team. LT Danielson transitioned from active duty and into the United States Navy Reserve in March 2019. On 11 April, LT Danielson

received his direct recall orders to active duty with the Military Commission Defense Organization (MCDO) and has yet to rejoin the team.

c. Mr. Bin al Shibh consents to the absence of both attorneys, and does not request the deferment of any arguments.

5. Law and Argument:

The Rules for Military Commission (R.M.C.) provide for the excusal of a detailed defense counsel “[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.” R.M.C. 805(c). The Rules of Court (R.C.) provide that defense counsel who have entered an appearance should attend all sessions of that case before the Commission. *See* R.C. 4.3. However, the Military Judge is permitted to 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).

Counsel for Mr. Bin al Shibh requests permission for Ms. Wichner to be absent from the hearings scheduled on 29 April—3 May hearings in accordance with her in-progress transition off the defense team and so that she may continue outstanding administrative tasks related to her impending departure from the team. LT Danielson’s separation from active duty and current absence from Mr. Bin al Shibh’s defense team necessitates that he be excused from the upcoming hearing. Consistent with R.M.C. 805(c), Mr. Bin al Shibh will have his Learned Counsel, Mr. James P. Harrington, Mr. Wyatt A. Feeler, civilian defense counsel, and Captain John M. Balouziyeh, United States Army, present for the duration of the hearing.

6. Conference with Opposing Counsel: To the extent the absences of both attorneys is with the consent of Mr. Bin al Shibh, the Prosecution does not oppose.

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

8. Attachments:

A. Certificate of Service

Respectfully submitted,

//s//
JAMES P. HARRINGTON
Learned Counsel

//s//
WYATT A. FEELER
Defense Counsel

//s//
JOHN M. BALOUZIYEH, CPT, USA
Defense Counsel

//s//
ALAINA M. WICHNER
Defense Counsel

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

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on 16 April 2019, I electronically filed the forgoing motion with the Trial Judiciary and served it on all counsel of record by e-mail.

//s//
JAMES P. HARRINGTON
Learned Counsel