

NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

UNITED STATES)	GENERAL COURT-MARTIAL
)	
v.)	GOVERNMENT BRIEF REGARDING
)	CAPTAIN ROBERT F. MUTH'S
CALEB HOHMAN)	REPRESENTATION OF THE ACCUSED
XXX XX 6203)	
SERGEANT)	
U.S. MARINE CORPS)	3 August 2010
)	

1. **Nature of Brief.** Pursuant to the Military Judge's Order, the Government submits this brief on why good cause exists such that excusal of Captain Robert F. Muth as defense counsel in this case is the appropriate remedy.

2. **Facts.**

(a) The accused, Sergeant Caleb Hohman, was charged with failure to obey a lawful order, dereliction of duty, and involuntary manslaughter, violations of Articles 92 and 119 of the Uniform Code of Military Justice (UCMJ), which allegedly occurred on or about 30 October 2006 (Enclosure 1).

(b) The accused was arraigned by the military judge, Lieutenant Colonel Sanzi on 5 May 2008.

(c) Captain Muth appeared on the record for the first time in this case as Sergeant Hohman's detailed defense counsel at an Article 39a, U.C.M.J. hearing dated 14 October 2009. The accused went on the record at that hearing and stated he waived his right to be represented any further by Major Munoz. Major Munoz was the detailed defense counsel prior to Captain Muth but was released by the accused as the detailed defense counsel so that he could deploy.

(d) The next hearing on the record was another Article 39a session on 15 November 2009. The main purpose of the hearing was to conduct an in camera review of the Safety Center investigation. Captain Muth represented Sergeant Hohman at this session. At the conclusion of the session, the military judge stated on the record, that Captain Muth asked for an extension of his End of Active Service (EAS) which was approved through 1 December 2009. Captain Muth confirmed this and also stated that he was denied terminal leave due to his pending cases. The military judge wanted to put the accused on the record whether he was willing to waive further representation by Captain Muth or not before Captain Muth left active duty. Both the government and defense agreed that another session should be held prior to 30 November 2009 to put Sergeant Hohman's decision on the record.

(e) On 23 November 2009, Captain Muth submitted an Administrative Action (AA) form through his chain of command requesting an extension of his EAS from 1 December 2009 to 1 March 2010 so he could complete his pending cases as a defense counsel. His chain of command approved his request and forwarded it to the approving authority, Commandant of the Marine Corps, Officer Assignments, Programs and Plans, hereinafter called MMOA-3. MMOA-3 denied his second request for an extension on 27 November 2009 (Enclosure 2).

(f) Captain Muth's EAS date was previously extended to 1 December 2009 on 16 September 2009 (Enclosure 2).

(g) Captain Muth completed his active service on 1 December 2009 and transferred to the Individual Ready Reserve (IRR) on the same date.

(h) In March 2010, Captain Muth, submitted a request to MMOA-3 to resign his commission and cease his service within the IRR. This request was granted and his last day in the IRR is 1 September 2010.

(i) On 6 April 2010, a 39a hearing was conducted to schedule trial dates. Capt Kunce appeared as the detailed defense counsel for the accused. Sergeant Hohman did not waive his right to further representation by Captain Muth and requested Captain Muth be retained as his defense counsel. The Government asked for further dialogue on this matter to determine the attorney client rights of the accused. The defense counsel insisted that the accused wanted Captain Muth on the case as a defense counsel.

(j) The military judge issued a Judicial Order dated 5 June 2010, which ordered the government to return Captain Muth to active duty to represent the accused in light of the recent Hutchins decision.

(k) At an Article 39 session on 9 July 2010, the Government proffered that it secured temporary active duty (TAD) funds through Marine Expeditionary Force One (I MEF) if Captain Muth would accept active duty orders to complete his representation of the accused and/or sever the attorney-client relationship. The Government was unable to successfully get in contact with Captain Muth, despite leaving at least two phone messages with Captain Muth to determine whether or not he was willing to come on active duty. The Defense did not know either, as of 9 July 2010, whether or not Captain Muth was willing to come on active duty, voluntarily, to complete his representation of the accused.

(l) The week following the 9 July 2010 Article 39a session, Captain Muth communicated with the military judge via email that he was unwilling to return to active duty to represent Sergeant Hohman, but would represent him as a civilian counsel at his current hourly rate of \$300.00 an hour.

(m) The military judge issued a Judicial Order to submit briefs in anticipation of another Article 39a session regarding Captain Muth and his representation of the accused.

3. Discussion.

Where the attorney-client relationship was formed, the relevant portion of R.C.M. 505(d)(2)(B) provides:

After an attorney-client relationship has been formed between the accused and detailed defense counsel or associate and assistant defense counsel, an authority competent to detail such counsel may excuse or change such counsel only:

- (ii) Upon request of the accused or application for withdrawal by such counsel under R.C.M. 506(c); or
- (iii) For other good cause shown on the record.

To excuse Captain Muth under 506(c), express consent of the accused is required or “by the military judge upon application for withdrawal by the defense counsel for good cause shown.” Sergeant Hohman made it clear on the record that he seeks to retain Captain Muth as a defense counsel in this case. However, the summary of Captain Muth’s position with respect to his desires to represent Sergeant Hohman in Judicial Order of 21 July 2010 states that his civilian clientele are his primary concern:

Captain Muth provided that he is now engaged in the practice of law as a civilian attorney, and a return to active duty would be intolerably disruptive to his livelihood and civilian practice, and would interfere with his representation of civilian clientele. Captain Muth stated essentially that he does not desire to return to active duty to represent Sergeant Hohman, though he would represent him in his civilian capacity as long as the government pays him his current hourly rate of \$300.00 per hour.

Captain Muth has not appeared as a defense counsel in this case since his EAS. Before *United States v. Hutchins*, 68 M.J. 623 (N.M.Ct.Crim.App.2010), good cause to excuse Captain Muth would likely have been established on these facts alone. However, good cause under *Hutchins* requires, “truly extraordinary circumstances rendering virtually impossible the

continuation of the established relationship.” This precedent requires the Government to show that every reasonable avenue was visited for good cause to be established.

Captain Muth exhausted the only option that would not require him to incur two additional years of obligated active duty service. If he were willing to stay in the active duty force for at least two more years, he would have the option to submit another request for an EAD in order to be reconsidered for career designation, pursuant to MCO 1001.45J. However, had he been successful in his request, he may have been selected on the next career designation board and incurred an additional two years of active duty service. Despite the fact that MMOA-3 did not provide a specific reason in the letter dated 27 November 2009, denying Captain Muth’s EAD request the order that outlines the EAD request process provides:

Approval of an administrative EAD request, where career potential is not the primary issue, may be granted under the following circumstances:

(a) The extension of an officer is critical to meet a specific operational commitment. MCO 1001.45J(4)(b)(2)(a)(3).

The language of the Order seems to say that for someone in Captain Muth’s position, who was not career designated, reasons that justify an EAD must be such that a particular officer is essential to a precise mission. Captain Muth expressed in the statement that accompanied his AA form, that he needed to complete his pending cases. MMOA-3 knew Captain Muth had at least three cases still pending because he explained that in his AA form. However, they chose to deny his request, indicating that representing his clients to the completion of their proceedings was not an operational commitment that rises to the critical level of granting an EAD for a non-career designated Marine Officer. This alone distinguishes this case from Captain Bass in *Hutchins*.

In *Hutchins*, Captain Bass did not seek to an EAD. In fact, unlike Captain Muth who was denied terminal leave, Captain Bass took terminal leave and left the Southern California area

prior to severing his attorney-client relationship with the accused. The military judge in *Hutchins* also did not inform the accused that he could seek to retain Captain Bass. Instead, the military judge told the accused that he could no longer have Captain Bass as in defense counsel because his EAS expired and there was no way to bring him back on active duty to complete the case.

In this case, the military judge established on the record that the accused wished to retain Captain Muth as his defense counsel. Although the Government denied Captain Muth's EAD request, it was able to secure TAD funds to bring Captain Muth back on active duty for the amount of time necessary to complete the Hohman case. The Government in *Hutchins* did not provide Captain Bass this option. Still, Captain Muth would have to accept active duty orders voluntarily and he told the military judge he is unwilling to accept orders.

There are only a few rare instances where the Government may involuntarily recall a Marine from the IRR. According to MCO 1000.8 the Fleet Assistance Program, "Upon mobilization, the CMC...may issue to Reserve and retired Marines mailgram orders involuntarily returning them to active duty." The language is permissive, and this is the only indicator that at any time, may an IRR Marine be recalled to active duty involuntarily. Otherwise, IRR Marines may only be "authorized voluntary active duty."

Another way an IRR Marine may be involuntarily recalled may occur when the recall has been authorized by the President or Secretary of Defense to augment the active forces for any operational mission or Support for Responses to Certain Emergencies U.S.C. Title 10 Section § 12304. Such a recall may not be made to "provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe." Additionally, such a recall requires a determination by the President that the response capabilities of all other agencies have been exhausted. A reservist may also be called to active duty during a time of

declared war or in response to a declared state of national emergency § 12301. Lastly, any reservist so recalled is allowed to file for Delay, Deferment and Exemption in order to escape involuntary recall.

Finally, Captain Muth expressed to the military judge in an email that the only way he would be willing to continue the attorney-client relationship with the accused is if the Government paid for his civilian hourly rate of \$300.00 an hour. The Government may not ethically provide payment to Captain Muth under these circumstances. JAG Instruction 5803.1B, Rule 1.5(c) provides:

A Reserve or Retired judge advocate, whether or not serving on extended active-duty, who has initially represented or interviewed a client or prospective client concerning a matter as part of the attorney's official Navy or Marine Corps duties, shall not accept any salary or other payments as compensation for services rendered to that client in a private capacity concerning the same general matter for which the client was seen in an official capacity, unless so authorized by the Judge Advocate General.

Captain Muth is a reserve judge advocate who says he is willing to continue representing Sergeant Hohman on the same matter as he did when he was the detailed defense counsel, but at his civilian rate of \$300.00 an hour. The Government refuses to entertain this course of action because it would violate the Rules of Conduct for Judge Advocates. It would also violate Federal law. Title 18, U.S.C. § 203 states:

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly— **(1)** demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another...when such person is an officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission; or **(2)** knowingly gives, promises, or offers any compensation for any such representational

services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee; shall be subject to the penalties set forth in section 216 of this title.

If the Government were to comply with Captain Muth's request to pay him his hourly rate, not only would the Government violate the Judge Advocate General Rules of Conduct, it would violate Federal law. That leaves the following options in this case:

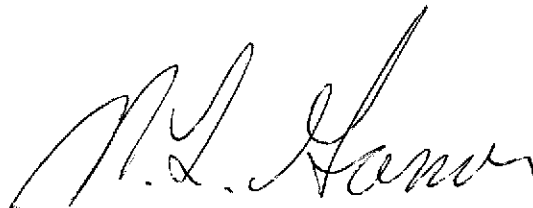
(1) Captain Muth withdraws his resignation request and submits another AA form requesting reconsideration of his EAD with the understanding that he could be career designated and incur two (2) years of active duty service.

(2) Captain Muth represents the accused in his civilian capacity as a civilian defense counsel at no cost to the Government.

(3) Based on the exigent circumstances that meet or exceed the *Hutchins* standard for good cause, that is the Hutchins standard, "in cases where there exist truly extraordinary circumstances of the established relationship," the military judge should excuse Captain Muth from this case.

(4) Captain Muth submits a withdrawal request pursuant to R.C.M. 506(c) to the military judge to be excused from this case.

4. **Remedy.** Excuse Captain Muth as defense counsel for the Accused for good cause on the record.



N. L. Gannon
Major, U.S. Marine Corps
Trial Counsel

Certificate of Service

I hereby attest that a copy of the foregoing motion was served on the court and opposing counsel by electronic mail on ~~7 August 2010.~~

3 Aug 2010



N. L. Gannon
Major, U.S. Marine Corps
Trial Counsel

CHARGE SHEET

I. PERSONAL DATA			
1. NAME OF ACCUSED (<i>Last, First, MI</i>) Hohman, Caleb P.	2. SSN 475 02 6203	3. RANK/RATE Sgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION HqBn, 1stMarDiv, Camp Pendleton, CA		6. CURRENT SERVICE	
		a. INITIAL DATE 2 Oct 05	b. TERM NA
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC \$2171.40	b. SEA/FOREIGN DUTY None	c. TOTAL \$2171.40	9. DATE(S) IMPOSED Not Applicable

II. CHARGES AND SPECIFICATIONS

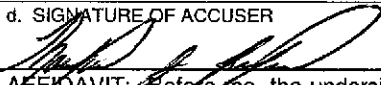
10. Charge I: Violation of the UCMJ, Article 92

Specification 1: In that Sergeant Caleb P. Hohman, U. S. Marine Corps, on active duty, did, on board Marine Corps Base Camp Pendleton, California, on or about 20 October 2006, violate a lawful general order, to wit: Paragraph 7001.4(e), Camp Pendleton Base Order P3500.1M, dated 4 September 2003, by removing 5.56mm jacketed frangible ammunition from the confines of live-fire Range 116D without authorization. *PW 080311*

Specification 2: In that Sergeant Caleb P. Hohman, U. S. Marine Corps, on active duty, did, on board Marine Corps Base Camp Pendleton, California, on or about 30 October 2006, violate a lawful general order, to wit: Paragraph 7(b)(4)(b), I Marine Expeditionary Force Order 3574, dated 4 December 2003, by failing to ensure that his magazines were loaded with 5.56mm blank single round ammunition prior to participating in a blank-fire training exercise.

Specification 3: In that Sergeant Caleb P. Hohman, U. S. Marine Corps, on active duty, who knew of his duties on board Marine Corps Base Camp Pendleton, California, on or about 20 October 2006, was derelict in the performance of those duties in that he negligently failed to unload the 5.56mm jacketed frangible ammunition from his M-4 service rifle magazines prior to leaving a live-fire range. *PW 080311*

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) JONES, THOMAS J.	b. GRADE SGT	c. ORGANIZATION OF ACCUSER CLR-17, 1st MLG, MarForPac, CamPen, CA
d. SIGNATURE OF ACCUSER 		e. DATE 18 Apr 07

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 18th day of April, 2007, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

A. C. GOODE

Typed Name of Officer

Captain, USMC

Grade and Service



Signature

CLR-17, 1st MLG, MarForPac, CamPen, CA

Organization of Officer

Judge Advocate

Official Capacity to Administer Oaths

(See R.C.M. 307(b)--must be commissioned officer)

12. On 19 APRIL 20 07, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

B. M. O'SHEA

Typed Name of Immediate Commander

HqBn, 1stMarDiv, CampPen, CA

Organization of Immediate Commander

First Lieutenant

Grade

[Signature]

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1600 hours, 19 APRIL 20 07 at HqBn, 1stMarDiv
Camp Pendleton, CA
Designation of Command or
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE¹ Commanding Officer

B. M. O'SHEA

Typed Name of Officer

Legal Officer

Official Capacity of Officer Signing

First Lieutenant

Grade

[Signature]

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

1st Marine Division (Rein)

Camp Pendleton, CA

MAR 19 2008

Referred for trial to the General court-martial convened by GCMCO serial # 01-06

dated 02 October 20 06, subject to the following instructions:² None.

By //////////////////// of _____
Command or Order

T. D. WALDHAUSER

Typed Name of Officer

Commanding General

Official Capacity of Officer Signing

Major General

Grade

[Signature]

Signature

15. On 14 April 20 08, I (caused to be) served a copy hereof on (each of) the above named accused.

W. J. RYAN

Typed Name of Trial Counsel

Captain

Grade or Rank of Trial Counsel

[Signature]

Signature

FOOTNOTES

- 1 -- When an appropriate commander signs personally, inapplicable words are stricken.
- 2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

Specification ² 4. In that Sergeant Caleb P. Hohman, U. S. Marine Corps, on active duty, who knew of his duties on board Marine Corps Base Camp Pendleton, California, on or about 30 October 2006, was derelict in the performance of those duties in that he negligently failed to ensure that only 5.56mm blank single round ammunition was loaded into his magazines and failed to ensure that only 5.56mm blank single round ammunition was inserted into the chamber of his M-4 carbine service rifle prior to discharging the weapon at Sergeant Seth M. Algrim during a blank-fire training exercise.

Charge II: Violation of the UCMJ, Article 119

Specification: In that Sergeant Caleb P. Hohman, U. S. Marine Corps, on active duty, did, on board Marine Corps Base Camp Pendleton, California, on or about 30 October 2006, by culpable negligence, unlawfully kill Sergeant Seth M. Algrim, U. S. Marine Corps, by shooting him in the head with a 5.56mm jacketed frangible ammunition round from an M-4 Carbine service rifle.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1400

MMOA-3

NOV 27 2009

From: Commandant of the Marine Corps (MMOA-3)
To: Captain Robert F. Muth XXX-XX-3590/4402
Via: (1) Commanding General, 1st Marine Logistics Group
(2) Commanding Officer, Combat Logistics Regiment-17
(3) Company Commander, Service Company, Combat Logistics Regiment-17
(4) Officer-in-Charge, Legal Services Support Section, 1st Marine Logistics Group

Subj: REQUEST FOR EAD ICO CAPTAIN ROBERT F. MUTH XXX XX
3590/4402

Ref: (a) Captain's AA form of 26 Aug 09

1. Per response to reference (a) Captain Muth's request for extension on active duty has been carefully considered but disapproved.
2. Captain Muth's End of Active Service (EAS) date was previously extended to 1 December 2009 on 16 September 2009.
3. The point of contact for further questions is Second Lieutenant S. L. Snyder at (703) 784-9284.


D. J. Davis
By direction

Copy to:
Captain Muth
MMOA-2

ENCLOSURE (2)



UNITED STATES MARINE CORPS
1ST MARINE LOGISTICS GROUP
BOX 585607
CAMP PENDLETON, CALIFORNIA 92055-5607


1160
G-1
23 Nov 09

FOURTH ENDORSEMENT on Capt Muth's AA Form 1000 of 23 Nov 09

From: Commanding General
To: Commandant of the Marine Corps (MMA-3)

Subj: REQUEST FOR SECOND EXTENSION OF END OF ACTIVE SERVICE IN
THE CASE OF CAPTAIN ROBERT F. MUTH 3590/4402 USMC

1. Forwarded, recommending approval.


S. B. ARMSTRONG
By direction



UNITED STATES MARINE CORPS
COMBAT LOGISTICS REGIMENT-17
1ST MARINE LOGISTICS GROUP
BOX 555607
CAMP PENDLETON, CALIFORNIA 92055-5607

1160
S-1
23 Nov 09

THIRD ENDORSEMENT on Capt Muth's AA Form 1000 of 23 Nov 09

From: Commanding Officer
To: Commandant of the Marine Corps (MCOA-3)
Via: (1) Commanding General, 1st Marine Logistics Group
Subj: REQUEST FOR SECOND EXTENSION OF END OF ACTIVE SERVICE IN
THE CASE OF CAPTAIN ROBERT F. MUTH 3590/4402 USMC

1. Forwarded, recommending approval.


T. J. GALVIN
By direction



UNITED STATES MARINE CORPS
SERVICE COMPANY
COMBAT LOGISTICS REGIMENT 17
1ST MARINE LOGISTICS GROUP
POX 555607
CAMP PENDLETON, CALIFORNIA 92055-5607

1160
SVC
23 Nov 09

SECOND ENDORSEMENT on Capt Muth's AA Form 1000 of 23 Nov 09

From: Commanding Officer
To: Commandant of the Marine Corps (MCOA-3)
Via: (1) Commanding Officer, Combat Logistics Regiment-17, 1st
Marine Logistics Group
(2) Commanding General, 1st Marine Logistics Group

Subj: REQUEST FOR SECOND EXTENSION OF END OF ACTIVE SERVICE IN
THE CASE OF CAPTAIN ROBERT F. MUTH 3590/4402 USMC

1. Forwarded, recommending approval.

A handwritten signature in black ink, appearing to read "E. R. POST", written over a horizontal line.

E. R. POST



UNITED STATES MARINE CORPS

LEGAL SERVICES SUPPORT SECTION
1st MARINE LOGISTICS GROUP, MARBORBAT
POB 45503
CAMP PENDLETON, CA 90602 5601

RECEIVED
1000
OTC
23 Nov 09

FIRST ENDORSEMENT on Capt Muth's AA Form 1000 of 23 Nov 09

From: Officer-in-Charge, Legal Services Support Section, 1st
Marine Logistics Group
To: Commandant of the Marine Corps (MMAA-3)
Via: (1) Commanding Officer, Service Company, Combat Logistics
Regiment-17, 1st Marine Logistics Group
(2) Commanding Officer, Combat Logistics Regiment-17, 1st
Marine Logistics Group
(3) Commanding General, 1st Marine Logistics Group
Subj: REQUEST FOR SECOND EXTENSION OF END OF ACTIVE SERVICE IN
THE CASE OF CAPTAIN ROBERT F. MUTH 3590/4402 USMC
Ref: (a) JAGINST 5803.1C

1. Forwarded recommending approval. Approval of Captain Muth's request for a three-month extension to his End of Active Service (EAS) will promote the accomplishment of the Legal Services Support Section (LSSS), 1st Marine Logistics Group (1st MLG) mission and minimize the additional expenditure of government time and resources in potential further delay of the cases and on potential post-trial issues.

2. Defense counsel detailed to represent servicemembers form an attorney-client relationship with their client under reference (a). During the course of their representation, defense counsel devote a considerable amount of time and resources investigating and preparing for trial. Captain Muth was detailed to each of these two complex cases, which are described in the basic correspondence, because of his unique skills and extensive experience as a defense counsel. He has spent a period of months preparing for trial in each of these cases.

3. One of the two court-martial cases in which Captain Muth has been detailed, U.S. v. Watson, is scheduled to be completed by 1 February 2010. Any denial of Captain Muth's request for extension of his EAS may have a direct adverse operational impact on the mission of the LSSS, 1st MLG, which is to provide effective and expeditious trial services support. Specifically,

Subj: REQUEST FOR SECOND EXTENSION OF END OF ACTIVE SERVICE IN
THE CASE OF CAPTAIN ROBERT F. MUTH 3590/4402 USMC

Captain Muth would be excused as detailed defense counsel as a result of his EAS on 1 December 2009 and the second detailed defense counsel, Captain Sarnit, could potentially need additional time to adequately prepare for trial. Furthermore, this excusal could create the potential for future post-trial issues arising over whether the accused received adequate legal representation.

4. If you wish to contact me with questions concerning this recommendation, I can be reached telephonically at (760) 725-9700 or by e-mail at Keith.Forkin@usmc.mil.


KEITH A. FORKIN

ADMINISTRATIVE ACTION (5216)

NAVMC 102.74 (REV. 3.86)

Previous editions will be used

SN: 00000-00-003-0904 U/I: PADS OF 100

1. ACTION NO.	2. SSIC/FILE NO. 1000
3. DATE: 23 NOV 09	

4. FROM (Grade, Name, SSN, MOS or (O) Pers O, etc.)
CAPT MUTH, ROBERT F. XXX XX-3590/4402,
USMC

5. ORGANIZATION AND STATION (Complete Address)
Legal Services Support Team-Echo
Legal Services Support Section
Box 555607
Camp Pendleton, California 92055

6. VA (As required)

- (1) OIC, ISSS
- (2) CG, Svc Co
- (3) CG, CLR-17
- (4) CG, 1st MIC

7.

TO:

Commandant of the Marine Corps
(MCA 1)
1280 Russell Road
Quantico, VA 22134-5103

8. NATURE OF ACTION/SUBJECT

Request for extension of EAS
date.

9. COPY TO
(1) FILE

10. REFERENCE OR AUTHORITY (If Applicable)

11. ENCLOSURES (If Any)

- (1) Description of pending cases

12. SUPPLEMENTAL INFORMATION (Reduce to minimum wording. Type name of originator and sign in below text)

1. I respectfully request an extension of my active duty service in order to have sufficient time to complete my work as a defense counsel on pending General Courts Martial cases and one complicated DuBay Hearing.

2. My End of Active Service (EAS) date is currently 1 December 2009. I respectfully request that the date be changed to 1 March 2010. This change would provide sufficient time for me to complete the pending cases I am serving on as defense counsel. This will prevent the significant prejudice to my clients that will result from being forced to involuntarily withdraw my representation of those Marines I currently represent.

3. An explanation of current pending cases that serve as the basis of this request is provided in Encl (1).

Robert F. Muth
R. F. MUTH

STATEMENT OF CASES

The following information is provided on each pending case as justification for this request to extend the EAS of Capt R. P. Muth, XXX-XX-3590/4402, USMC:

(a) *United States v. Watson* - Private First Class (PFC) Watson is charged with two specifications of attempted rape and premeditated murder, one specification of attempted kidnapping, two specifications of possession of child pornography and various other charges related to state weapons charges, communicating threats, indecent language with minors, and unauthorized absence. PFC Watson has been in pretrial confinement since 11 March 2009 and I was detailed to represent him later that month. I have represented PFC Watson for his initial Article 32 hearing and again for his two subsequent Article 32 hearings. PFC Watson has made numerous requests for speedy trial. His charges were finally referred on 28 October 2009. He was arraigned on 3 November 2009 having waived the five day waiting period. At the arraignment PFC Watson requested to have his case heard prior to my 1 December 2009 scheduled EAS. The military judge indicated he would not schedule the trial dates that quickly due to the complexity of the case. PFC Watson's trial is currently scheduled for 19-26 January 2010. This case deals with a number of complex issues and voluminous discovery. My withdrawal from representing PFC Watson would cause great prejudice to his case and further the already extensive pre-trial confinement time he has already been subjected to at this point in order to allow for another defense counsel to prepare for his trial.

(b) *United States v. Rohman* - This case involves a Sergeant charged with manslaughter in the death of another Marine in a training accident. This case has been pending for over three years at this point and the delay is due to the Navy Safety Center's Safety Investigation in the case. A Safety Investigation has been completed and the Safety Center had refused, per their standard policy, to release the results of their findings. The case was on hold indefinitely while awaiting the Secretary of the Navy's determination of whether the Safety Center will release their report. On 16 November 2009, the government approved allowing the safety center investigator to testify and an in camera review was conducted regarding his investigation. The military judge is currently reviewing motions and

documents from this hearing and as a result, no new trial dates have been set in this case.

(c) *United States v. Mancillas* - This case is a DuBay hearing into issues raised to the Court of Appeals for the Armed Forces (CAAF). This extraordinarily complicated DuBay hearing relates to a General Courts-Martial that took place over six years ago. The case involved a number of issues related to the mental capacity of the accused and the purported ineffective assistance of counsel at the trial level. The case involves extensive discovery including thousands of pages of trial transcript, medical records and appellate briefs and extensive case law research. The client has been variously committed to the mental health department at the Beaumont Army Medical Center at Fort Bliss, Texas. The DuBay hearing was conducted on 14-15 October. While the hearing is complete, the military judge did not close the hearing and left open the possibility that she might require another session of court depending upon her review of the record. Due to the difficulty of this case and the client's unstable mental condition, it would be extremely prejudicial to his case to have a substitute defense counsel appointed at this point if the military judge decided to take further testimony prior to closing the hearing.