

**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 006Z RULING Defense Request For Excusal of Detailed Military Defense Counsel 12 December 2019
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1. **Procedural History.** On 9 December 2019, Counsel for Mr. Hawsawi moved¹ to excuse Detailed Military Defense Counsel, Lieutenant Commander (LCDR) David Furry, U.S. Navy from further representation of Mr. Hawsawi due to his retirement from the U.S. Navy effective 1 December 2019.² The Government does not oppose.³

2. **Law.**

a. The Military Commissions Act of 2009 requires a Defense Counsel be detailed to represent the Accused facing trial by Military Commission. 10 U.S.C. § 948k(a)(1). For cases referred capital, the Accused has a right, “to the greatest extent practicable[,]” to be represented by a counsel who is “learned in applicable law relating to capital cases.....” 10 U.S.C. § 949a(2)(C)(ii). Assistant and associate defense counsel “may” be detailed to represent the Accused. 10 U.S.C. § 948k(a)(2).

¹ AE 006X (MAH), Defense Request for Excusal of Detailed Military Defense Counsel, filed 9 December 2019. Although styled as a request, the Commission considers this filing to be a motion requesting relief.

² The Commission notes that this motion was filed after LCDR Furry’s effective retirement date. In the future, the Commission expects Defense Teams to file Counsel excusal motions before the Counsel at issue’s scheduled departure from the Defense Team.

³ AE 006X (MAH) at para. 7.

b. R.M.C. 505(d)(2)(B), in relevant part, requires that “after an attorney-client relationship has been formed between the accused and any counsel for the accused, only the military judge may excuse or change counsel upon a showing of good cause on the record.”⁴

3. Findings of Fact.

a. On 17 March 2016, the Chief Defense Counsel detailed LCDR Furry as “Defense Counsel” to represent Mr. Hawsawi.⁵

b. LCDR Furry formed an attorney-client relationship with Mr. Hawsawi and entered an appearance on his behalf on 21 August 2017.⁶

c. LCDR Furry is scheduled to retire from the U.S. Navy on 1 December 2019.

d. If LCDR Furry is permanently excused, Mr. Hawsawi will be represented by Major Joseph D. Wilkinson II, as Detailed Military Defense Counsel (10 U.S.C. § 948k(a)(1)) and Mr. Walter Ruiz as Learned Counsel (10 U.S.C. § 949a(2)(C)(ii)).

e. Mr. Hawsawi consents to LCDR Furry’s permanent excusal.⁷

4. **Conclusion.** Counsel for Mr. Hawsawi have established good cause on the record to permanently excuse LCDR Furry from further representation of Mr. Hawsawi before this Commission. The Commission concludes that Mr. Hawsawi will continue to be adequately

⁴ See also Military Commissions Trial Judiciary Rule of Court (RC) (1 September 2016) 4.4.b requiring military judge approval to excuse defense counsel who have entered an appearance before the Commission.

⁵ AE 004Y (MAH), Notice of Detailing and Appearance of Defense Counsel, filed 18 August 2017.

⁶ Unofficial/Unauthenticated Transcript of the *U.S. v. Khalid Shaikh Mohammad, et al.* Motions Hearing Dated 21 August 2017 from 9:06 A.M. to 10:34 A.M. at pp. 16050 - 51.

⁷ Counsel for Mr. Hawsawi have proffered (but not provided evidence) that Mr. Hawsawi consents to LCDR Furry’s permanent excusal. Because Mr. Hawsawi continues to be represented by statutorily required Detailed Military Counsel and Learned Counsel, the Commission accepts the proffer of Mr. Hawsawi’s consent made by his Defense Team.

represented by his detailed Military Defense Counsel, his Learned Counsel, and other defense counsel detailed to his Defense Team.⁸

5. **Ruling.** The motion to permanently excuse LCDR Furry is **GRANTED**. The granting of this motion shall not constitute justification for a delay in the proceedings.

So **ORDERED** this 12th day of December, 2019.

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W. SHANE COHEN, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary

⁸ Although not specifically named in support of the motion, the Commission notes that Lieutenant Colonel Jennifer Williams, Mr. Sean Gleason, and Ms. Suzanne Lachelier are signatories to AE 006X (MAH) as defense counsel for Mr. Hawsawi.