

**DEPARTMENT OF THE AIR FORCE  
UNITED STATES AIR FORCE TRIAL JUDICIARY**

---

UNITED STATES	)	DEFENSE MOTION FOR
	)	APPROPRIATE RELIEF:
v.	)	RELEASE OF COUNSEL
	)	(Capt Jenna L. Stewart)
CAPT TONY A. MOE	)	
20th Health Care Operations Squadron (ACC)	)	
Shaw AFB, SC	)	30 May 2023

---

COMES NOW, Capt Jenna L. Stewart, detailed military defense counsel, for the Accused, Capt Tony A. Moe, to respectfully request to be released from the above-captioned case due to Capt Moe expressly consenting to release Capt Stewart. This motion is made pursuant Rules for Courts-Martial (R.C.M.) 505(d)(2)(B), and 506(c), Uniform Rule of Practice Before Air Force Courts-Martial (Uniform Rule) 2.5(B), and Air Force Rule of Professional Conduct (AFRPC) 1.16.

**SUMMARY**

Capt Tony A. Moe faces trial by general court-martial for one charge and specification under Article 121, Uniform Code of Military Justice (UCMJ); one charge and two specifications under Article 133, UCMJ; and one charge and one specification of Article 80, UCMJ. Arraignment and motions are currently scheduled for 9 June 2023, and trial on the merits is currently scheduled to begin on 12 June 2023. On 30 May 2023, Capt Moe released Capt Stewart as one of her detailed military defense counsel.

**FACTS**

1. On 1 March 2023, Lt Col [REDACTED], Commander of the 20th Health Care Operations Squadron, preferred against Capt Tony A. Moe, one charge and specification in violation of Article 86, UCMJ; one charge and specification in violation of Article 121, UCMJ; one charge and two specifications in violation of Article 133, UCMJ; and one charge and one specification in violation of Article 80, UCMJ. The charges and specifications were referred to a general court-martial on 24 April 2023, with Article 86 dismissed. (Attachment 1).
2. On 8 May 2023, Capt Stewart, Tyndall AFB Defense Counsel, formed an attorney-client relationship with Capt Moe. Prior to that Capt Branka Damjanovic, Moody AFB Defense Counsel, was detailed to this case from its inception and continues to represent Capt Moe. Capt Stewart has a scheduling conflict that threatens the viability of the current docketed dates in this case. After discussing this matter with Capt Moe on 30 May 2022, Capt Moe expressly released Capt Stewart from further representation on this matter. (Attachment 2). Capt Moe continues to be represented by Capt Branka Damjanovic, her military detailed defense counsel. Capt Tyler L. Washburn has been detailed as additional military defense counsel. (Attachment 3).

## **BURDEN**

3. The burden of persuasion lies on the moving party and applies a preponderance of the evidence standard. R.C.M. 905(c).

## **LAW**

4. R.C.M. 505(d)(2)(B) states that after the attorney-client relationship has been formed, an authority competent to detail such counsel may excuse or change such counsel upon the request of the Accused or upon application for withdrawal by such counsel under R.C.M. 506(c). R.C.M. 506(c) states that Defense Counsel may be excused only with the express consent of the Accused, or by the Military Judge upon application for withdrawal by counsel for good cause shown.

5. According to AFRPC Rule 1.16(a)(3), a lawyer “shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . . the lawyer is discharged by the client,” except as stated in paragraph (c). AFRPC Rule 1.16(c) provides “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal or other competent authority, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”

6. In accordance with AFRPC Rule 1.16(b)(1), a lawyer “may withdraw from representing a client if . . . withdrawal can be accomplished without material adverse effect on the interests of the client.” Additionally, in accordance with AFRPC Rule 1.16(b)(7), a lawyer “may withdraw from representing a client if . . . other good cause exists.”

7. Under Uniform Rule 2.5(B), *Withdrawal by Counsel*, “detailed and individual military defense counsel may not withdraw from representation of the accused without CCMJ or military judge approval, whether or not the accused desires to release the military counsel (*see also* RCMs 505(d)(2) and 506(c)).”

## **ANALYSIS**

8. On 30 May 2023, Capt Moe knowingly and voluntarily released Capt Stewart. This request for the release and withdrawal of Capt Stewart is made in good faith; there is no “gamesmanship” in the making of this request. Capt Stewart’s withdrawal can be accomplished without material adverse effect to Capt Moe’s interests. Capt Damjanovic and Capt Washburn will represent Capt Moe moving forward. In light of the above, Capt Stewart respectfully requests that the Court release her from further representation in this case under R.C.M. 505(d)(2)(B)(ii), R.C.M. 506(c), Uniform Rule 2.5(B), and AFRPC 1.16.

## **RELIEF REQUESTED**

9. Wherefore, the defense respectfully requests that this Honorable Court release Capt Stewart from further representation in this case. The defense does not request an Article 39(a), U.C.M.J., hearing on this matter.

Respectfully submitted on 30 May 2023.



JENNA L. STEWART, Capt, USAF  
Defense Counsel

3 Attachments:

1. DD Form 458, Referred Charge Sheet, dated 24 April 2023, 3 pages
2. Release of Counsel Memorandum – Capt Stewart, dated 30 May 2023, 1 page
3. Notice of Representation – Capt Tyler Washburn, dated 30 May 2023, 1 page

**CERTIFICATE OF SERVICE**

I certify that on 30 May 2023, a copy of this Defense Motion for Appropriate Relief: Release of Counsel (Capt Stewart) was electronically filed with the Court.



JENNA L. STEWART, Capt, USAF  
Defense Counsel