

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.) No. 09-00362-CR-W-NKL
)
JAMES J. STROBBE)
 and)
STEVE ALLEN)
)
 Defendant.)

MOTION BY DEFENDANT STROBBE FOR CONTINUANCE
WITH SUGGESTIONSIN SUPPORT

COMES NOW defendant and moves the Court for a continuance of
the trial setting in this case. As grounds, defendant states:

1. This matter is presently set for trial on June 7, 2010. Counsel has serious conflicts in the month of June that will make it impossible to adequately represent Mr. Strobbe if this case remains on the current setting.
2. Undersigned counsel just finished a jury trial in federal court in Kansas City, Kansas last week that resulted in an acquittal. That trial, although short in duration, required considerable investigation and preparation during the months of April and May, prior to trial.
3. Counsel is a sole practitioner. Counsel is scheduled to commence trial in *United States v. Rostie, et al*, 08-00026-CR-W-FJG, in front of Judge Giatan on June 21, 2010, a court designated complex prosecution.

Undersigned counsel is retained counsel for one of three remaining defendants, Christopher Elder, Md. This prosecution has been pending since February 5, 2008 and Dr. Elder and his two co-defendants have been provided with nearly 30,000 pages of discovery. The government has indicated that it will call 55 witnesses and that the trial could take three weeks or more to try. Additionally, the Court has set a *Daubert* hearing in response to a motion filed by Dr. Elder which involves a government expert from Houston, Texas which will focus on issues of considerable significance to Defendant Elder. This hearing is to commence on June 4, 2010. Defendant Elder, a Houston, Texas resident, will call a number of defense witness from the Houston area and counsel needs to oversee service of process and do witness preparation for the defense case. Counsel is working nearly full time at this point on preparation for the Elder case.

4. Counsel must also file an application for certiorari with the United States Supreme Court in the case of *United States v. Gary Eye*, 05-CR-00344-W-ODS, a capital case tried in front of Judge Smith (non-death verdict) that has, in counsel's opinion, a significant and meritorious unresolved *Bruton* issue in which the 8th Circuit agreed with defendant's argument but determined

the error to be harmless beyond a reasonable doubt. The petition is due on June 18, 2010.

5. Defendant Strobbe is presently free on bond and has no objection to this request for continuance. AUSA Charles Ambrose is aware of this request and does not object. The co-defendant in this case is represent by Mr. Ronald Hall. Mr. Hall does not oppose this motion or a September setting.
6. Mr. Strobbe's case involves charges of distribution of cocaine. Counsel previously represented Mr. Strobbe in a prior cocaine case in which he received probation by virtue of departure consideration. The former option is not available in this case and he has been certified as a prior offender and upon conviction in a contested trial will face a mandatory minimum of 20 years. Counsel is in negotiations with the government in an attempt to resolve this case and believes there is a substantial likelihood that there will be an eventual resolution short of trial; however, counsel needs addition time to work with the client. Obviously, if negotiations fail, even more time will be needed for final trial preparation.
7. Counsel submits that defendant Strobbe is entitled to a continuance under the provisions of Title 18, United States Code, Section 3161(h)(8)(B), in that: 1) trial

on the current June 2010 setting would result in a miscarriage of justice; 2) the case is significant in terms of the outcome because of the serious nature of the charges and mandatory minimum punishment of 20 years and it is unreasonable to expect counsel and the defendant to be ready for trial by the currently scheduled date; and, 3) failure to grant the continuance would likely prevent undersigned counsel from being able to adequately complete vital work that needs to be done and prepare and present the defense case in a meaningful and constitutionally adequate means.

8. Counsel has not in his professional judgment undertaken more representation than he is capable of managing. It is simply a matter of unfortunate timing that necessitates this request. This is the first request for a continuance in this case.

WHEREFORE, defendant, through counsel, moves the court to strike this matter from its present setting and reset the trial for the Month of September 2010.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed via electronic filing system on Wednesday, May 19, 2010 to:

AUSA Chuck Ambrose
Attorney for United States
US Attorney's Office
400 East 9th Street
Kansas City, MO 64106

AND

RONALD HALL, attorney for co-defendant Allen

/s/
JOHN R. OSGOOD