

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

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| UNITED STATES OF AMERICA |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 08-00026-04-CR-W-FJG |
| |) | |
| CHRISTOPHER L. ELDER, |) | |
| TROY SOLOMON, and |) | |
| DELMON L. JOHNSON, |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS' JOINT MOTION TO CONTINUE THE TRIAL
SETTING TO THE JULY 20, 2009 DOCKET WITH SUGGESTIONS
IN SUPPORT**

COME NOW defendants and move the Court to continue the trial of this case until the July 20, 2009 regular trial docket. As grounds defendants offer:

1. Doctor Elder, Mr. Solomon and Mr. Johnson all face serious felony charges that could result in substantial incarceration upon conviction. Doctor Elder also faces the reality of loss of his medical license if convicted. Mr. Johnson and Mr. Solomon will suffer loss of possible business and pharmacy licenses if convicted. As of this filing, defense counsel have been provided almost 20,000 pages of witness statements, medical and pharmacy records, shipping documents, state hearing

transcripts, grand jury transcripts, telephone record print outs, and other information which is and continues to be under review and study. The case is by any criteria exceedingly complex.¹

2. Counsel for defendant Elder has discussed a continuance with AUSA Rhodes and he is not opposed to this continuance and also would prefer the July 20, 2009 regular trial docket. Counsel for Solomon and Johnson, Mr. Anthony Bannwart, has also been consulted and he too favors a July 20, 2009 as does separate counsel for Mr. Solomon, Mr. Chip Lewis. Both Mr. Bannwart and Mr. Lewis have authorized and consented for counsel to file this motion as a joint motion. All defendants are free on bail and none have had any bail related incidents that would impact a ruling on this motion.

3. Following the initial disclosure of discovery, the government provided all defendants with a sizeable amount of additional follow up investigative materials reflecting new and expanded investigation conducted during the month of November 2008. All defense counsel received this latter government information in mid to late November in a timely fashion and have since been engaged in the analysis of those materials which include witness statements and a sizeable amount of documentary

¹ This figure does not include the voluminous amount of information contained on CDs in electronic format which was also produced consisting of mirror images of the computers seized in this case. This information consists of pharmacy records, shipping records, emails and other things normally found on a business computer system.

evidence. This has necessitated in many instances a re-review and analysis of previously provided 18 to 20 thousand pages of discovery.

4. Earlier this month the government served notice that it intends to call a local physician and a Ms. Carmen Catizone of the National Association of Boards of Pharmacy as experts. Defense counsel has now been apprised of the nature and substance of their expected testimony. Defendants are exploring the need for rebuttal experts in both disciplines to address some of the issues raised by the testimony of these two experts. Additional time is needed to accomplish this task. The government will also call a Houston police officer as an expert of some sort. Defendant Elder and possibly co-defendant counsel will likely file a request for a *Daubert* hearing with respect to the latter witness and additional time is needed by all counsel to assess his testimony once details are provided by the government.

5. The tasks required by all counsel are exacerbated to some degree by the fact that this case is indicted in Missouri while the defendants all reside in Texas with witnesses located in both jurisdictions. This presents logistical problems and issues that are not normally present when all defendants and witnesses are located in the same judicial district. In the event the motion for change of venue is again denied, all counsel will need to have subpoenas served on out-of-state witnesses and make arrangements for flights, travel expense and lodging. This requires significant lead time to avoid possible travel snags and excessive cost of transpiration.

6. On March 17, 2009 the Texas Medical Board filed approximately 50 pages of information with the court for *in camera* review in response to a subpoena issued by Elder to the TMB. After review and a ruling by the Court defendants will need time to address any issues, do further investigation, or file motions with respect to this matter. There are also significant and important motions now on file which are yet to be ruled by the Magistrate which, depending on how they are ruled, will have a direct and significant impact on all counsel. These include but are not limited to a motion for severance because of joinder problems by Elder; motions for change of venue to Texas; and, a sealed motion that will likely require a hearing on the issue of the representation of the defendants Solomon and Johnson which could dramatically affect trial preparation for Solomon and Johnson depending on how the motion is ruled and who ultimately represents which client or clients.

7. Once these motions are ruled, the parties will need additional time study the rulings and make various tactical decisions that could have a significant impact on how various clients approach the defense in this case and decide whether or not to seek relief from the district court on any adverse ruling.

8. Counsel for defendants Solomon and Johnson, Mr. Bannwart, further advised that he is presently reviewing four to six boxes of records seized from Ascensia Pharmacy that are in the custody of the DEA in Houston, Texas and that as a result of that review he now needs additional time to conduct yet further

investigation based on what he has found in those records. It would also appear that this directly impacts and affects defendant Elder and will also require coordination with Mr. Lewis in his role as separate counsel for Mr. Solomon. This may well require counsel for Elder to travel to Houston to participate in a review and analysis of Mr. Bannwart's work product.

9. Counsel submits that defendants are entitled to a continuance under the provisions of Title 18, United States Code, Section 3161(h)(8)(B), in that: a) trial on the current docket would result in a miscarriage of justice with respect to all defendants; b) the case is significant in terms of the outcome for the reasons stated in the above paragraphs; c) it is unreasonable to expect defense counsel and the defendants themselves to be ready for trial by the currently scheduled trial date; and, d) failure to grant the continuance would likely prevent all counsel from being able to adequately prepare and fully present the defense case for their respective clients.

10. This request is not made with intent to gain tactical advantage over the prosecution and counsel are unaware of any prejudice that might result to the prosecution if this request is granted.

WHEREFORE, defendants move the Court to strike this matter from its present setting and reschedule the matter for the July 20, 2000 regular trial docket. As noted above, this motion is unopposed by the government and Mr. Rhodes has specifically also requested this date in the event the court grants this motion.

Respectfully submitted,

/s/

John R. Osgood
Attorney at Law, #23896
Commercial Fed Bnk- Suite 305
740 NW Blue Parkway
Lee's Summit, MO 64086
Email: jrosgood@earthlink.net
Office Phone: (816) 525-8200
Fax: 525-7580

Counsel for Christopher Elder

/s/

Anthony L. Bannwart
Attorney at Law - Texas Bar 00792344
7322 Southwest Freeway, Ste 1510
Houston, TX 77074
Office Ph: (713) 807-0020
Fax: (713) 807-0040

Counsel for Troy Solomon and
Delmon Johnson

/s/

Chip Lewis
Attorney at Law
2120 Welch
Houston, TX 77019
Email: chippblewis@aol.com
(713) 523-7878

Counsel for Troy Solomon only

/s/

Mary Grace Ruden
2120 Welch
Houston, TX 77019
Email: marygrace853@aol.com
(713) 523-7878

Co-counsel with Mr. Lewis for
for Troy Solomon only

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System on March 17, 2009.

/s/

JOHN R. OSGOOD