

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Case No. 1:04-CR-165

Plaintiff,

v.

Honorable Robert Holmes Bell
Chief United States District Judge

DAVID ALBRECHT,

Defendant.

DEFENDANT ALBRECHT'S MOTION FOR A 90-DAY
"ENDS OF JUSTICE" CONTINUANCE
AND BRIEF IN SUPPORT

Now comes the defendant, David Albrecht, by and through his attorney, and hereby moves this Honorable Court to grant a 90-day "ends of justice" continuance of the final pretrial and trial dates pursuant to 18 U.S.C. § 3161(h)(8)(A) and Rule 23.2 of the Local Rules of Practice and Procedure for the United States District Court for the Western District of Michigan. A continuance is necessary to allow the defense an adequate opportunity to review the thousands of documents in this case and to substitute new counsel for current counsel because of an anticipated conflict of interest. The Assistant United States Attorney assigned to this case, Thomas J. Gezon, does not oppose this motion.

BRIEF IN SUPPORT OF MOTION FOR CONTINUANCE

This is a case in which there are eight co-defendants. Mr. Albrecht is charged with 39 counts of mail fraud, one count of conspiracy to commit mail fraud, one count of conspiracy to commit money laundering, one count of conspiracy to defraud the United States, a total of 20 counts of money laundering (set forth in the indictment as a group of 15 counts, and a group of five additional counts), and one count of forfeiture. A final pretrial conference is currently scheduled for January 28, 2005, and the trial is currently scheduled to begin on February 7, 2005.

The superseding indictment in this case alleges a large-scale fraudulent scheme with alleged monetary losses of millions of dollars. The government possesses thousands of documents which need to be reviewed in order to effectively represent Mr. Albrecht in this matter. The undersigned, who carries a full case-load of about 25 cases, simply cannot review thousands of documents in this case while still providing effective representation to his other clients.

Additionally, there is an anticipated conflict of interest that may require new counsel to be appointed for Mr. Albrecht. Raymond Kent has been selected as the new Federal Public Defender in this district, and will probably join the Federal Public Defender office in the relatively near future. Mr. Kent currently represents Janet Markusse, the first named defendant in this case. The Federal Public Defender office cannot ethically represent two co-defendants in the same case. The undersigned counsel has discussed this matter with Mr. Kent, who agrees that when he becomes the Federal Public Defender, either he or the

undersigned will have to withdraw as counsel.

The authority granted to courts to exclude time from the running of the 70-day period within which a defendant must be brought to trial by 18 U.S.C. § 3161(h)(8)(A) offers “wide latitude to the judges. It allows the courts to respond to the needs of individual cases.” United States v. White, 985 F.2d 271, 275 (6th Cir. 1993). In these circumstances, a continuance is necessary and the “ends of justice” will be served by it. Additional time for the defense to adequately review thousands of documents and substitute new counsel for Mr. Albrecht when the anticipated conflict of interest becomes ripe, “outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(8)(A). Mr. Albrecht is released on bond.

Conclusion

Based on all of the above, the defendant David Albrecht, respectfully requests an additional 90 days in order to allow his counsel to effectively represent him and prepare for trial.

Respectfully submitted,

PAUL L. NELSON
Acting Federal Public Defender

\s\ Paul J. Denenfeld

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Dated: December 6, 2004