

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON**

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA

PLAINTIFF

V.

MOTION TO CONTINUE TRIAL

RONALD E. WEINLAND

DEFENDANT

* * * * *

MOTION

Defendant Ronald E. Weinland, through undersigned counsel, respectfully moves this Court, pursuant to Local Criminal Rule 12.1(b) and 18 U.S.C. § 3161(h)(7), and with sufficient cause, for an Order continuing the trial date in this matter, currently set for January 31, 2012, at 10:00 a.m., for at least 180 days to such dates that are convenient to the Court. Mr. Weinland respectfully requests this continuance due to the unusual and complex nature of the case. As a result, it is unreasonable to expect adequate preparation for any pretrial proceedings or for the trial itself within the time limits established by the Speedy Trial Act.

As the Court is aware, counsel for the United States has already indicated that the United States does not object to designating this case as complex. Further, defense counsel has communicated with counsel for the United States with regard to this request for continuance and the government has stated that it has no objection to a sufficient continuance to allow defense counsel adequate time to prepare for trial. However, counsel for the United States was unwilling to agree to a continuance of at least 180 days.

FACTUAL BACKGROUND

Mr. Weinland has served as a minister in the Church of God (“COG”) since 1981. On November 10, 2011, the government filed a five-count indictment against Mr. Weinland. The indictment charges Mr. Weinland with five counts of tax evasion (26 U.S.C. § 7201) over a period of five years starting in 2004. The indictment resulted from the government’s investigation that began as early as July 2, 2008. One of the central alleged acts of evasion listed in the indictment is that Mr. Weinland used COG funds for his personal use and did not report the funds as income on his tax return. Mr. Weinland appeared before this Court on November 22, 2011 for his initial appearance and arraignment in this case. Defense counsel appeared as retained counsel of record for Mr. Weinland at that time. Mr. Weinland entered a plea of not guilty to the indictment and was released on a \$20,000 unsecured bond.

Counsel for the United States permitted defense counsel to review much of the government’s discovery prior to the filing of the indictment. The government’s discovery is substantial and includes five years of transaction and account activity for numerous COG bank accounts and personal bank and credit card accounts associated with Mr. Weinland. Further, based upon defense counsel’s review of the government’s voluminous discovery, it is defense counsel’s understanding that much of the government’s allegation of unreported income stems from the government’s detailed analysis of five years of transaction and account activity that occurred through these church and personal accounts. Specifically, based on defense counsel’s cursory review of the government’s discovery, it appears that the government reviewed each individual transaction in order to determine the nature and character of each specific transaction (i.e., whether the transaction was a church expense or a personal expense). Finally, the conduct alleged in the indictment also involves the added complexity of a foreign bank account.

Accordingly, defense counsel's effective preparation in this case will require defense counsel to review the significant financial data that the government has collected for the five year period covered by the indictment. Additionally, defense counsel will need to analyze the complex tax issues surrounding each individual transaction that the government has characterized as a personal expense (included in personal income) as opposed to a church expense (not included in personal income). For example, there could be a colorable legal basis for treating a certain expense as a church expense that the government has characterized as a personal expense.

LEGAL ARGUMENT

In making this request for a continuance, Mr. Weinland acknowledges and understands that he has a right to a speedy and public trial in this matter and that this right has been guaranteed to Mr. Weinland by the Sixth Amendment to the United States Constitution and the Speedy Trial Act (18 U.S.C. § 3161 et seq.). However, Mr. Weinland now moves for a continuance in order to permit both Mr. Weinland and defense counsel the reasonable time necessary to obtain and adequately review the government's substantial discovery material in this case, analyze any relevant legal issues, prepare and address any pretrial proceedings and otherwise effectively prepare for trial.

As this Court is aware, the Court has the discretion to grant a continuance where the "ends of justice serviced by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A); See Also United States v. Howard, 218 F.3d 556, 563 (6th Cir. 2000) (discussing that the decision of whether to grant an "ends of justice" continuance under the Speedy Trial Act is within the sound discretion of the district court). The factors that the Court must consider in determining whether to grant a continuance

under 18 U.S.C. § 3161(h)(7)(A) are set forth in 18 U.S.C. § 3161(h)(7)(B). With respect to specific factors under 18 U.S.C. § 3161(h)(7)(B) that are relevant to Mr. Weinland's request for a continuance, the Court may grant a continuance where: (i) the failure to grant the motion to continue would be likely to result in a miscarriage of justice (18 U.S.C. § 3161 (h)(7)(B)(i)); (ii) the case is complex due to the nature of the prosecution and it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself (18 U.S.C. § 3161 (h)(7)(B)(ii)); and/or (iii) the failure to grant the motion to continue would unreasonably deny counsel for the parties reasonable time necessary for effective preparation (18 U.S.C. § 3161 (h)(7)(B)(iv)).

Mr. Weinland respectfully submits that the requested continuance of the trial date is justified under 18 U.S.C. § 3161(h)(7)(A) and is supported by the identified factors set forth in 18 U.S.C. § 3161(h)(7)(B). As stated above, this is a complex tax case that involves multiple bank and credit card accounts, and numerous transactions that were made through those accounts, spanning a five year period. The government has analyzed and characterized each individual account transaction that occurred over the five year period as a "church expense" or a "personal expense." These transactions occurred on an almost daily basis, with multiple transactions often occurring on a single day. The volume and breadth of the government's financial analysis, and the related discovery, is substantial.

The requested continuance is necessary to provide defense counsel with sufficient time to review the government's financial analysis and to analyze tax issues related to that analysis, including, but not limited to, the government's characterization of certain expenses and the unique tax issues associated with churches and minister compensation (e.g., a housing allowance being excluded from gross income for income tax purposes, exemption from self-employment tax, etc.). Given the substantial financial discovery and the unique tax issues in this matter, a

continuance would permit defense counsel the necessary time to adequately prepare for any pretrial proceedings and the trial itself. Consequently, the failure to grant the requested continuance would deny Mr. Weinland the reasonable time necessary for effective preparation, thereby, significantly jeopardizing Mr. Weinland's ability to defend himself against the pending charges.

Accordingly, Mr. Weinland respectfully submits that there is a basis for the Court to find that the period of time from December 6, 2011, until the new date set for trial is excludable from computing the time period in which trial must occur under the Speedy Trial Act. Permitting Mr. Weinland and his counsel the reasonable time necessary to adequately and effectively prepare a defense against the pending charges serves the "ends of justice" and "outweigh[s] the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The ends of justice served by granting the instant motion for continuance outweigh the best interests of the public and Mr. Weinland in a speedy trial, because (i) the failure to grant the motion would be likely to result in a miscarriage of justice (18 U.S.C. § 3161(h)(7)(B)(i)); (ii) it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself because the case is complex due to the nature of the prosecution (18 U.S.C. § 3161(h)(7)(B)(ii)); and (iii) the failure to grant the motion would deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence (18 U.S.C. § 3161(h)(7)(B)(iv)).

CONCLUSION

WHEREFORE, for reasons set forth above, the Defendant respectfully moves the Court to grant his motion for a continuance and to enter an order continuing the current trial date in this matter, and the dates in the scheduling order, for at least 180 days to such dates that are convenient to the Court.

Respectfully submitted,

/s/ Robert C. Webb _____

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2011, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to Robert K. McBride, Robert.McBride@usdoj.gov.

By: /s/ Robert C. Webb
ROBERT C. WEBB
Counsel for Ronald E. Weinland