

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-364(1) (RHK/AJB)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.)
)
THOMAS JOSEPH PETERS,)
)
)
 Defendant.)

GOVERNMENT'S MOTION
TO STRIKE DEFENDANT'S
"REPLY" MEMORANDUM

The United States of America, by and through its attorneys Frank J. Magill, United States Attorney for the District of Minnesota, and Joseph T. Dixon, III and John R. Marti, Assistant United States Attorneys, respectfully submits this Motion To Strike Defendant's submission dated May 29, 2009, which is styled "Defendant's Reply In Support of Objections."

Local Rule 72.2 limits the parties' submissions to 3,500 words and does not provide for a Reply Memorandum. On May 29, 2009, without leave from the Court, the defendant filed a 12-page Reply Memorandum (of approximately 3,000 words), a 5-page affidavit, and a 73-page addendum. Whereas their initial submission included a Certificate of Compliance (3,460 words, forty less than the maximum), notably absent from their Reply is any Certificate of Compliance.

Moreover, the purported "Reply" is not really a reply at all: it is a supplement to the 3,460-word Objections already filed and a plain effort to circumvent the word limit imposed by Local Rule

72.2. Indeed, the defendant now concedes that, contrary to his prior assertion to this Court, he has had access to the documents seized from the corporation for months and the Defense Team actually reviewed the documents in question in February 2009. The Defense Team has yet to request the return of any specific document.

Notwithstanding the blizzard of paper filed on his behalf, the defendant has still not provided the Court with competent evidence establishing a personal attorney-client relationship or claimed a personal privilege as to any specific document. Even so, the defense asks the Court to conduct an in camera review to determine which specific documents seized from corporate headquarters are subject to a personal privilege: a task that, to date, the Defense Team has been unwilling to do. There is no evidentiary record to support such a request.

The effort should be understood for what it is: a pointless procedural ploy intended to delay and derail these proceedings.

Ultimately, the defense pronounces that it seeks to preclude the government from using privileged materials at trial. Reply at 11. Notably, the magistrate judge's order requires both parties to exchange exhibit and witness lists 30 days prior to trial at which time the Court will know whether the purported attorney-client privilege issue is anything other than a wasteful, academic exercise.

Dated: May 31, 2009

Respectfully Submitted,

FRANK J. MAGILL, JR.
United States Attorney

/s/ John R. Marti

BY:

JOSEPH T. DIXON, III
JOHN R. MARTI
Assistant U.S. Attorneys