

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 3:75-CR-26-F
No. 5:06-CV-24-F

UNITED STATES OF AMERICA)	
)	GOVERNMENT'S RESPONSE TO
v.)	MOVANT'S MOTION TO EXTEND
)	TIME TO FILE JOINT PROPOSED
JEFFREY R. MacDONALD,)	<u>SCHEDULE</u>
Movant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits this response to Movant's "Motion to Extend Time to File Joint Proposed Schedule," filed July 5, 2012, [DE-271] and, in opposition to said motion, respectfully shows unto the Court the following:

1. It is now apparent that the Movant is seeking further delay in the evidentiary hearing now scheduled for August 20-31, 2012. This is consistent with a pattern of delay on the Movant's part since this matter was remanded from the Fourth Circuit. The Government respectfully opposes such delay.

2. The Government's filing of June 29, 2012, was not a motion to reconsider this Court's June 8 Order [DE-266], as alleged in the Movant's filing of July 5. See DE-271 at 3. In its filing, the Government pointed out that Movant had designated nine (9) persons for depositions, only one of which was in the group of persons that the Court identified in its Order affording Movant the opportunity for depositions. See DE-266 at 4 ("[I]t occurred to the court that MacDonald may at some future date complain that he

was not afforded an opportunity to depose certain witnesses whose affidavits were appended to . . . DE-212 . . .").

3. It is not the Government's filing of June 29, 2012, that has "complicated the ability of the parties to prepare a 'joint proposed schedule'" for completing depositions. DE-271 at 2-3. The factors causing delay have been (1) the Movant's request for a delay in the original June 22 deadline for identifying witnesses to be deposed; and (2) the Movant's request to depose eight (8) witnesses whose depositions do not appear to be contemplated by the June 8 Order.

4. The Government has tried to be cooperative with Movant's various counsel when they have sought delay because of instability in Movant's counsel situation and other scheduling concerns. But the Government strongly believes that resolution of the matters remanded from the Fourth Circuit needs to move forward, and that the evidentiary hearing should not be delayed further. The Court carefully identified two possible places on its calendar and the parties chose August 20-31, 2012. The hearing should not be delayed while the Movant goes on a fishing expedition. He has had at least six years to find support for his "Britt claim" and his "unsourced hair claim." The fact that those claims remain weak is not a reason to delay adjudication of them while the Movant pursues belated discovery attempting to find something new for his now 33-year old post-trial litigation.

5. The Government respectfully requests that any depositions

be limited as requested in the Government's filing of June 29, 2012 [DE-270], that the Movant be required to designate immediately any expert(s) that he plans to use at the evidentiary hearing, that the Court direct that those depositions be completed by July 31, 2012, and that the evidentiary hearing take place as scheduled on August 20, 2012.

Respectfully submitted, this 5th day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the defendant in this action either electronically or by placing a copy of same in the United States mail, postage prepaid, and addressed to counsel for defendant as follows:

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This, the 5th day of July, 2012.

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