

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 04-20017-DV
)	
RANDE LAZAR, M.D., d/b/a)	
OTOLARYNGOLOGY)	
CONSULTANTS OF MEMPHIS,)	
Defendants.)	

ORDER VACATING OCTOBER 4, 2004 ORDER GRANTING GOVERNMENT'S MOTION
TO COMPEL DEFENDANT TO PROVIDE EXPERT WITNESS LIST
AND
ORDER GRANTING GOVERNMENT'S MOTION TO COMPEL EXPERT WITNESS LIST

By order dated and entered October 4, 2004, the court granted the government's motion to compel the defendant, Rande Lazar, to provide the government with an expert witness list in light of the fact that Lazar had filed no response in opposition to the motion. Lazar now asks the court to vacate the October 4, 2004 order on the grounds that he did indeed respond to the government's motion. He requests that the government's motion and his response be considered on the merits.

The government's motion to compel an expert witness list was filed September 17, 2004, and served on the defendant's by mail. Pursuant to Local Criminal Rule 12.1, responses to motions are required to be filed within eleven days from the date of service of

the motion if a party opposed the motion. According to Rule 45 of the Federal Rules of Criminal Procedure, in computing time, Saturdays and Sundays are excluded if the period of time is less than eleven days. Because the period of time for responding to motions in criminal cases in this district is eleven days, Saturdays and Sundays are not excluded. Thus, the eleven days would have run on September 28, 2004. In addition, because the government served the motion by mail, an additional three days is allowed for responding pursuant to Rule 45(c). Therefore, Lazar's response was required to be filed on Friday, October 1, 2004. Lazar's response was placed in the mail on September 28, 2004, but not stamped filed until Monday, October 4, 2004. No time is indicated.

Because the court is unable to determine if the response was actually received on Friday, October 1, 2004, the court will give the defendant the benefit of the doubt and consider the response timely filed. Thus, the order of October 4, 2004 is vacated.

Turning to the merits of the motion, by order entered April 21, 2004, this court ordered Lazar to provide a list of his expert witnesses within twenty days of receipt of the government's list of expert witnesses. The government filed their list on April 27, 2004. By order dated May 20, 2004, District Judge Bernice B. Donald, upheld the magistrate judge's April 21, 2004 order and directed Lazar to provide reciprocal discovery relating to experts

within thirty days of the order.

Lazar has had ample time to retain experts. The court realizes that there are two other motions pending relating to expert discovery. Nevertheless, the court finds that the government has established good cause and grants their motion. Lazar shall file and serve on the government his expert witness lists within thirty days of the date of service of this order.

IT IS SO ORDERED this 18th day of October, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE