

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO. 3:08-cr-170-DPJ-FKB

CASSANDRA FAYE THOMAS

DEFENDANT

ORDER

This criminal matter is before the Court on Defendant Cassandra Faye Thomas's Motion to Strike [114]. The motion is denied.

On May 16, 2012, the Court held an evidentiary hearing regarding Defendant's post-trial motions. Oral argument followed on May 17, during which the Court granted Defendant until May 23 to supplement her second new-trial motion with expert affidavits. The Government was given five days to respond and was further instructed to address the legal interplay between state law and the federal programs. Defendant filed her affidavits as instructed, and the Government filed its response May 30. Defendant now moves to strike because (1) she contends that the response is not timely; and (2) she believes the Government did not raise a sufficient argument in response. The Government responded in opposition, and Thomas filed no reply.

As for the timing issue, Federal Rule of Criminal Procedure 45 provides the method for calculating due dates. In particular, Rule 45(c) states, "Whenever a party must or may act within a specified period after service and service is made in the manner provided under Federal Rule of Civil Procedure 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under subdivision (a)." Rule 5(b)(2)(E) includes service by electronic means, and Rule 5(b)(3) states that "[i]f a local rule so authorizes, a party may use the court's transmission

facilities to make service under Rule 5(b)(2)(E).” The local rules do so allow, and that is exactly how Thomas filed her affidavits. Thus, the three days are added and the motion is timely.

Regardless, the Court would not strike the response on this basis. Rule 45(b)(1) states “the court on its own may extend the time” to respond. In this case, the response Defendant seeks to strike because it was supposedly one day late responds to affidavits that were significantly delinquent. Defendant failed to specifically raise or adequately support this argument in her second new-trial motion. But in the interest of justice, the Court granted Defendant another opportunity to support her contention. It would have been within the Court’s discretion to simply reject Defendant’s argument as unsupported, but having allowed the untimely submissions, the Court will consider the Government’s response even if it was, as Defendant argues, one day late.

Finally, Defendant’s belief that the Government’s response is not sufficient to defeat her argument is not a basis for striking the response altogether. The motion is denied.

**SO ORDERED AND ADJUDGED** this the 29<sup>th</sup> day of June, 2012.

*s/ Daniel P. Jordan III*  
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UNITED STATES DISTRICT JUDGE