

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:08CV00207 ERW
)	
FRANK L. ZERJAV, SR., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on United States’ Motion to Quash Deposition Subpoena Issued to IRS Special Agent Villhard [doc. #135], and Defendant Frank L. Zerjav, Jr.’s Motion to Compel the Deposition of Scott French [doc. #144]. The Court held a hearing on these pending Motions on Wednesday, September 2, 2009, and the Parties presented oral arguments with respect to each Motion.

The Motion to Quash brought by the Government seeks to have the Court quash the deposition subpoena issued by Defendant Frank L. Zerjav, Jr. (“Defendant Tiger Zerjav”) to IRS Special Agent George Villhard. Mr. Villhard is the lead criminal investigator in an ongoing, separate criminal investigation of the Defendants. Defendant Tiger Zerjav’s Motion to Compel presents issues that are similar to those presented by the Government’s Motion to Quash. Specifically, Defendant Tiger Zerjav seeks to have the Court compel the deposition of IRS Senior Analyst Scott French, the former supervisor of George Villhard. Both Motions require this Court to address the division of the separate criminal and civil investigations of Defendants conducted by the IRS.

“The civil and regulatory laws of the United States frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous. In the absence of prejudice to the parties involved, such parallel proceedings are unobjectionable under our jurisprudence.” *SEC v. Dresser Indus. Inc.*, 628 F.2d 1368, 1374 (D.C. Cir. 1980). Such parallel proceedings are common in cases involving alleged tax fraud because “[t]he IRS splits the responsibility for enforcing the nation’s tax laws between its two investigative divisions.” *United States v. Peters*, 153 F.3d 445, 447 (7th Cir. 1998). “The Criminal Investigative Division (‘CID’) is charged with investigating criminal violations of the tax code and related federal statutes,” while “the Examination Division of the IRS is responsible for conducting civil tax audits.” *Id.* This case involves parallel civil and criminal proceedings and the overlap of the proceedings has resulted in discovery disputes between the Parties.

The Court begins by noting that the Government violated Local Rule 37-3.04(B) by failing to file a motion to quash the deposition of Scott French before the scheduled deposition date. As a result, Defendant Tiger Zerjav was forced to file the pending Motion to Compel. The Court also notes that it will not permit the Government to hide behind the criminal investigation in an attempt to reduce the amount of discovery produced in this case. As a result, the Court orders that the depositions of George Villhard and Scott French will both go forward, although they will be limited to four topics:

- 1) Any meetings that either Mr. Villhard or Mr. French had with Revenue Agent Mark Stone regarding the civil Zerjav case, including any directions that Mr. Villhard or Mr. French gave to Mr. Stone.

- 2) Any meetings that either Mr. Villhard or Mr. French attended with revenue agents involved in the Zerjav case, *i.e.*, “get togethers” with those involved in the Zerjav investigation.
- 3) Any meetings that either Mr. Villhard or Mr. French had with taxpayers who hired the Zerjav Firm, including what the taxpayers told Mr. Villhard and Mr. French.
- 4) Any meetings that either Mr. Villhard or Mr. French had regarding the audited returns related to the civil Zerjav case, including any instructions given to agents involved in the civil investigation.

The Court expects that the depositions of George Villhard and Scott French will proceed on these four topics, without objections from opposing counsel.

Accordingly,

IT IS HEREBY ORDERED that United States’ Motion to Quash Deposition Subpoena Issued to IRS Special Agent Villhard [doc. #135] is **GRANTED, in part**, and **DENIED, in part**, as set forth in the Memorandum and Order above.

IT IS FURTHER ORDERED that Defendant Frank L. Zerjav, Jr.’s Motion to Compel the Deposition of Scott French [doc. #144] is **GRANTED, in part**, and **DENIED, in part**, as set forth in the Memorandum and Order above.

Dated this 10th Day of September, 2009.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE