

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON**

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA

PLAINTIFF

**V. DEFENDANT’S MOTION IN LIMINE CONCERNING
THE TRIAL TESTIMONY OF LAY WITNESSES**

RONALD E. WEINLAND

DEFENDANT

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May it please the Court, Defendant Ronald E. Weinland, through undersigned counsel, hereby moves the Court pursuant to Federal Rule of Evidence 602 and 701 to bar lay witnesses from offering testimony regarding matters, including, but not limited to, the financial transactions of the Church of God – Preparing for the Kingdom of God (“COG-PKG”), for which the witnesses have no personal knowledge. The United States has indicated that it intends to call certain COG-PKG members, and perhaps other lay witnesses, as witnesses at trial to identify expenditures made by the Weinlands and reimbursed by COG-PKG. The determination of whether a specific transaction is either church or personal is a legal determination made based upon the relevant section(s) of the Internal Revenue Code, related Treasury regulations, and the specific facts and circumstances surrounding the transaction. As a result, any lay witness testimony concerning specific financial transactions for which the witness has no personal knowledge is not admissible under Fed. R. Evid. 602 and 701 and should be excluded from the trial of this action.

A. Rule 602 prohibits a witness from testifying about a matter for which the witness has no personal knowledge.

Under Rule 602, “a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” “Unlike an expert witness, who may give his or her opinion about a matter within the witness' expertise, a lay witness may testify only about matters within his or her personal knowledge.” *Kemp v. Balboa*, 23 F.3d 211, 213. Thus, Rule 602 “prohibits a lay witness from testifying about matters that are not within the personal knowledge of the witness.” *Id.* It is this requirement that is the “most pervasive manifestation” of the common law insistence upon “the most reliable sources of information.” USCS Federal Rules of Evidence, Rule 602, Advisory Committee Notes to 1972 Proposed Rules. As a result, lay witness testimony in this matter must be limited to only those matters for which the witness has personal knowledge.

B. Rule 701 precludes opinion testimony by lay witnesses with respect to matters for which the witness has no personal knowledge.

The Federal Rules of Evidence strictly limit the type of opinion testimony that a lay witness may present. Under Rule 701, lay opinion testimony must satisfy three requirements before such opinion testimony is permitted. First, the testimony must be “rationally based on the perception of the witness.” Fed. R. Evid. 701(a). This limitation has been identified as the “familiar requirement of first-hand knowledge or observation.” Fed R. Evid. 701, Advisory Committee Notes to 1972 Proposed Rules. Second, the testimony must be “helpful to a clear understanding of the witness testimony or the determination of a fact in issue.” Fed. R. Evid. 701(b). Finally, the testimony must not be “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701(c). Thus, Rule 701 requires that

lay witness testimony in this matter must be limited to only those matters for which the witness has personal knowledge.

For each of these reasons, the Court should limit the testimony of lay witnesses in this matter to only those matters for which the witnesses have personal knowledge.

A proposed order is submitted herewith.

Respectfully submitted,

/s/ J. Christopher Coffman_____

Robert C. Webb

J. Christopher Coffman

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2012, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to Robert K. McBride, Robert.McBride@usdoj.gov.

By: /s/ J. Christopher Coffman
J. CHRISTOPHER COFFMAN
Counsel for Ronald E. Weinland