

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

CHRISTIAN F. MEISTER,

Plaintiff,

v.

Case No. 2:06-cv-444-FtM-34SPC

MIKE SCOTT, in his official capacity as Sheriff of Lee County, Florida; MIKE SCOTT, in his individual capacity as Sheriff of Lee County, Florida; DON HUNTER, in his official capacity as Sheriff of Collier County, Florida; J.J. CARROLL, RICHARD SNYDER, RYAN JUSTHAM, STEPHAN PIERCE, GENE SIMS, PEDRO J. SOTO, MIKE JOHNSTON, each of the foregoing, jointly and severally,

Defendants.

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**ORDER**<sup>1</sup>

**THIS CAUSE** is before the Court on Plaintiff's Motion for Review of Magistrate's Order RE Plaintiff's Motion to Exceed the Twenty-five (25) Page Limit filed on April 7, 2008 (Doc. No. 151; April 7th Motion for Review) and Plaintiff's Motion for Review of Magistrate's Order RE (1) Opposed Plaintiff's Motion to Stay this Litigation for a Period of Six Months, (2) Opposed Plaintiff's Motion for an Enlargement of Time, (3) Plaintiff's Motion to Appoint an Attorney, (4) Opposed Plaintiff's Motion to Order all Defendants to Release any and all Deposition Transcripts at No Charge to the Plaintiff (Doc. No. 178; June 20th Motion for Review). Defendants oppose both Motions for Review. See Defendants' Response to

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<sup>1</sup> This is a "written opinion" under § 205(a)(5) of the E-Government Act and therefore is available electronically. However, it has been entered only to decide the motions addressed herein and is not intended for official publication or to serve as precedent.

Plaintiff's Motion for Review of the Magistrate's Order Denying Plaintiff Leave to Exceed Page Limits Set by M.D. Fla. Local Rule 3.01(B) (Doc. No. 167) and Defendants, LCSO, Scott, Snyder, Justham, Pierce, Sims, Soto and Johnston's Opposition to Plaintiff's Motion for Review of Court's 6/6/08 Order (Doc. No. 181).

In the April 7th Motion for Review, Plaintiff asks the Court to review an Order entered by the Honorable Sheri Polster Chappell, United States Magistrate Judge on March 11, 2008. See generally April 7th Motion for Review. Specifically, Plaintiff seeks review of the March 11, 2008 Order (Doc. No. 147; Order) in which Judge Chappell granted Plaintiff's request for an extension of time up to and including March 24, 2008, in which to respond to motions to dismiss filed by the Defendants, but denied his request to exceed the page limit in his responses. See generally Order. As noted above, Plaintiff filed the April 7th Motion for Review on April 7, 2008. Pursuant to Rule 72(a), Federal Rules of Civil Procedure, (Rule(s)), a party may file objections to a nondispositive order issued by a magistrate judge within 10 days of service of the nondispositive order. As Plaintiff did not file objections to the Order until April 7, 2008, the April 7th Motion for Review is **due to be denied as untimely**.

In the June 20th Motion for Review, Plaintiff seeks review of the magistrate judge's order denying his request for a six month stay of the instant litigation, a seven month extension of time in which to respond to motions for summary judgment filed by the various Defendants, appointment of counsel and an order directing the Defendants to provide him with copies of deposition transcripts "at no charge." See generally June 20th Motion for Review. The Order at issue is a nondispositive order. Under Rule 72(a), Plaintiff may object

to a nondispositive order entered by the magistrate judge, but in order to prevail, he must establish that the order is clearly erroneous or contrary to law. See Nat'l Ass'n for the Advancement of Colored People v. Fla., Dep't of Corrs., 122 F. Supp. 2d 1335, 1337 (M.D. Fla. 2000). The Court has reviewed Plaintiff's objections as well as Judge Chappell's Order and finds that the objections must be overruled as Plaintiff has not shown that Judge Chappell's Order is clearly erroneous or contrary to law. See Byrne v. Nezhat, M.D., 261 F.3d 1075, 1102-03 (11th Cir. 2001); McWhorter v. City of Birmingham, 906 F.2d 674, 678-79 (11th Cir. 1990); Ivey v. Snow, Civil Action No. 1:05-CV-1150-JOF, 2007 WL 1810213, at \*2 (N.D. Ga. June 21, 2007). Accordingly, the June 20th Motion for Review is **due to be denied**.

The various Defendants in this action filed motions to dismiss Plaintiff's Fifth Amended Complaint on January 31, 2008, February 1, 2008, and February 4, 2008. See Defendants Snyder, Justham, Pierce, Sims, Soto, and Johnston's Motion to Dismiss Plaintiff's Fifth Amended Complaint (Doc. No. 127); Defendant Scott's Motion to Dismiss Plaintiff's Fifth Amended Complaint (Doc. No. 128); and Defendants J.J. Carroll and Don Hunter's Motion to Dismiss Plaintiff's Fifth Amended Complaint and Supporting Memorandum of Law (Doc. No. 129) (collectively "Motions to Dismiss"). In accordance with the deadline set in the magistrate judge's March 11, 2008 Order, Plaintiff filed a response to the Motions to Dismiss on March 24, 2008. See Plaintiff's Response and Memorandum of Law in Support of Plaintiff's Response in Opposition to Defendants Scott, Hunter, Carroll, Snyder, Justham, Pierce, Sims, Soto, and Johnston's Motion [sic] to Dismiss Plaintiff's Fifth Amended Complaint (Doc. No. 148; Response to Motions to Dismiss). However, Plaintiff's

Response to Motions to Dismiss, which is 145 pages in length, violated the Court's prior Order and the Local Rules, United States District Court, Middle District of Florida (Local Rule(s)). Accordingly, the Response to Motions to Dismiss is **due to be stricken**.

The record in this action further reflects that the Defendants have filed motions for summary judgment. See (1) Defendants' Snyder, Justham, Pierce, Sims, Soto, and Johnston, Motion to for [sic] Summary Judgment and Memorandum of Law in Support Thereof (Doc. No. 154), filed on April 11, 2008; (2) Defendant Scott's Motion to for [sic] Summary Judgment and Memorandum of Law in Support Thereof (Doc. No. 155), filed on April 11, 2008; and (3) Defendants J.J. Carroll and Don Hunter's Motion for Summary Judgment, Statement of Undisputed Facts and Supporting Memorandum of Law (Doc. No. 157), filed on April 11, 2008 (collectively "Motions for Summary Judgment"). Rather than respond to the substance of the Motions for Summary Judgment as required by the Federal Rules and the Local Rules, Plaintiff filed his Motion to Strike All Defendant(s)' Motions for Summary Judgment, as herein specified[,] Opposed Plaintiff's Motion to Stay this Litigation for a Period of Six Months, as herein specified[,] Opposed Plaintiff's Motion for an Enlargement of Time, as herein specified[,] Plaintiff's Motion to Appoint an Attorney, as herein specified[,] [and] Opposed Plaintiff's Motion to Order All Defendants to Release Any and All Deposition Transcripts at No Charge to the Plaintiff, as herein specified (Doc. No. 171; Motion to Strike). Finding the Motion to Strike to be lacking in merit, the Court has denied it. However, despite the fact that filing the Motion to Strike **did not** relieve Plaintiff of his obligation to file timely and appropriate responses to the Motions for Summary Judgment, Plaintiff has failed to do so.

Plaintiff has been repeatedly cautioned that he must comply with the deadlines and requirements of Court Orders, the Rules and the Local Rules of this Court, yet seems determined not to do so. See Orders (Doc. Nos. 22, 114, 138). As a result, this action, which was filed in September of 2006, has yet to progress beyond the pleading stage. In consideration of Plaintiff's pro se status, the Court will give him one final opportunity to properly respond to all of the pending motions. Should Plaintiff fail to file responses that are both timely and comply with the Court's directives and the Rules,<sup>2</sup> his responses will be stricken and the Court will proceed with consideration of the pending Motions to Dismiss and Motions for Summary Judgment without further delay. The Court will not tolerate any further unnecessary delay of this action.<sup>3</sup> Additionally, in order to allow the undersigned sufficient time to resolve any dispositive motions prior to the pretrial conference, the Court will continue this case to the January 2009 trial term.<sup>4</sup>

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<sup>2</sup> The Court cautions Plaintiff that he should review Rule 56, the Case Management and Scheduling Order entered on May 8, 2007 (Doc. No. 69), and the Court's Summary Judgment Notice (Doc. No. 185) to assure that he properly responds to the motions.

<sup>3</sup> In an abundance of caution, the Court takes this opportunity to admonish Plaintiff that "[a] district court is authorized . . . to dismiss an action for failure to prosecute or to obey a court order or federal rule." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985). Indeed, under Rule 41(b), dismissal is warranted if "(1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice." Betty K Agencies, Ltd. v. M/V Monada, 432 F.3d 1333, 1338 (11th Cir. 2005) (quoting World Thrust Films, Inc. v. Int'l Family Entertainment, Inc., 41 F.3d 1454, 1456 (11th Cir. 1995)). While the Court is not suggesting that the record in this action currently warrants such findings, Plaintiff should endeavor to meet all future deadlines.

<sup>4</sup> In light of the Court's decision to sua sponte remove this case from the September trial term, Defendants', LCSO, Scott, Snyder, Justham, Pierce, Sims, Soto and Johnston, Motion to Suspend Filing of Pretrial Statement, Trial Brief and Meeting with Plaintiff Pending Rulings on Defendants' Motions for Summary Judgment (Doc. No. 182) is due to be denied as moot.

In light of the foregoing, it is

**ORDERED:**

1. Plaintiff's Motion for Review of Magistrate's Order RE Plaintiff's Motion to Exceed the Twenty-five (25) Page Limit filed on April 7, 2008 (Doc. No. 151) is **DENIED**.

2. Plaintiff's Motion for Review of Magistrate's Order RE (1) Opposed Plaintiff's Motion to Stay this Litigation for a Period of Six Months, (2) Opposed Plaintiff's Motion for an Enlargement of Time, (3) Plaintiff's Motion to Appoint an Attorney, (4) Opposed Plaintiff's Motion to Order all Defendants to Release any and all Deposition Transcripts at No Charge to the Plaintiff (Doc. No. 178) is **DENIED**.

3. Plaintiff's Response and Memorandum of Law in Support of Plaintiff's Response in Opposition to Defendants Scott, Hunter, Carroll, Snyder, Justham, Pierce, Sims, Soto, and Johnston's Motion [sic] to Dismiss Plaintiff's Fifth Amended Complaint (Doc. No. 148) is **STRICKEN**.

4. On or before **August 22, 2008**, Plaintiff shall respond to the pending Motions to Dismiss. Plaintiff may, at his option, file one consolidated response to the three motions that does not exceed 60 pages or a separate response (no longer than 25 pages in length) to each separate motion to dismiss.

5. On or before **September 22, 2008**, Plaintiff shall respond to the pending Motions for Summary Judgment. Plaintiff may, at his option, file one consolidated response

to the three motions that does not exceed 60 pages or a separate response (no longer than 25 pages in length) to each separate motion for summary judgment.<sup>5</sup>

6. This matter is continued from the September 2, 2008, trial term to the **January 5, 2009**, trial term. The final pretrial conference currently set for August 18, 2008, at 10:00 a.m. is rescheduled for **December 22, 2008 at 10:00 a.m.**, before the undersigned in Courtroom 5D. The parties shall meet in person no later than **November 26, 2008**, to prepare a Joint Final Pretrial Statement. The Joint Final Pretrial Statement is due no later than **December 8, 2008**. All other motions Including Motions *In Limine* and Trial Briefs are due no later than **December 8, 2008**.

7. Defendants', LCSO, Scott, Snyder, Justham, Pierce, Sims, Soto and Johnston, Motion to Suspend Filing of Pretrial Statement, Trial Brief and Meeting with Plaintiff Pending Rulings on Defendants' Motions for Summary Judgment (Doc. No. 182) is **DENIED as MOOT**.

**DONE AND ORDERED** in Chambers, this 25th day of July, 2008.

  
**MARCIA MORALES HOWARD**  
United States District Judge

Copies to:  
Counsel of Record and Pro Se Parties

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<sup>5</sup> The Court notes that the September 22, 2008 deadline set forth herein differs from the deadline in the Court's Summary Judgment Notice (Doc. No. 185). While Plaintiff should heed the admonishments contained in the Summary Judgment Notice, Plaintiff shall comply with the September 22, 2008 deadline set forth above.

