

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CHRISTIAN F. MEISTER,

Plaintiff,

v.

CASE NO. 2:06-CV-444-FTM-34SPC

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

Defendants.

**DEFENDANTS J. J. CARROLL AND DON HUNTER'S
MOTION TO STRIKE PLAINTIFF'S NOTICE OF APPEAL**

COME NOW, Defendants, J. J. CARROLL, and SHERIFF DON HUNTER, in his official capacity, ("Defendants"), by and through their undersigned counsel, and hereby move to strike Plaintiff's Notice of Appeal dated July 25, 2008, and state as follows:

1. On July 25, 2008, Plaintiff Meister filed a Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit.

2. Specifically, Plaintiff seeks to appeal this Court's Order of July 16, 2008:
 - a. Denying Plaintiff's Motion for Review of Magistrate's Order denying:
 - (1) Plaintiff's Motion to Order Defendants to Serve Plaintiff with Defendants' Motions to Compel.
 - (2) Plaintiff's Motion to Order Defendants to Show Cause Why Defendants' Motions Were Not Served Pursuant to Rules; and
 - b. Denying Plaintiff's Motion to Vacate and/or Set aside Magistrate's Orders of March 7, 2008, and March 10, 2008, granting Defendants' Motions to Compel Discovery Responses.
3. Defendants Carroll and Hunter show that Plaintiff's Notice of Appeal encompasses a non-final, non-appealable order and therefore the United States Court of Appeals for the Eleventh Circuit does not have jurisdiction to consider same.
4. As such, Plaintiff's Notice of Appeal dated July 25, 2008, should be stricken.
5. In support of this motion, Defendants rely upon the following Memorandum of Law.

MEMORANDUM OF LAW

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, the Court may "strike from a pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter. The Court may act on its own or on motion made by a party either before responding to the pleading or, if response is not allowed, within 20 days after being served with the pleading."

The Courts have recognized that notices of appeal may be stricken pursuant to Rule 12(f). See *Anderson v. Campbell*, 2007 WL2479319 (2nd No. Distr. of FL 2007), citing *Theriault v. Silver*, 574 F2d 197 (5th Cir. 1978).

The jurisdiction of the federal appellate courts, including that of the Eleventh Circuit, is defined in 28 U.S.C. §§1291 through 1296. Section 1291 provides that final decisions of the district courts are directly appealable to the appropriate federal court of appeals. Section 1292 provides for appeal of certain interlocutory orders, including those pertaining to injunctions, the appointment of receivers, and decisions affecting the rights and liabilities of parties in admiralty cases. In addition, a court of appeals may entertain, upon exercise of its discretion, appeals of orders of the district courts stating “that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation...” 28 U.S.C. §1292(b).

The interlocutory Order referenced in Plaintiff’s Notice of Appeal does not fall within the categories of appealable orders under either §1291 or §1292. As Plaintiff is not entitled to appeal said Order, his Notice of Appeal is clearly inappropriate and should be stricken.

WHEREFORE, Defendants, CARROLL, and HUNTER, respectfully request that the Court strike Plaintiff Notice of Appeal dated July 25, 2008.

Respectfully submitted,

/s/ Richard M. Pierro Jr. _____

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Counsel for Defendants J.J. Carroll and Don Hunter

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Robert C. Shearman, Esq., Henderson, Franklin, Starnes & Holt, P.A., 1715 Monroe Street, P.O. Box 280, Fort Myers, Florida 33902-0280. I further certify that I mailed the foregoing document to the following non-CM/ECF participants: Christian F. Meister, *pro se*, P.O. Box 60662, Fort Myers, Florida 33906.

/s/ Richard M. Pierro Jr. _____

Attorney