

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CHRISTIAN F. MEISTER,

Plaintiff,

v.

CASE NO. 2:06-CV-444-FTM-99SPC

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

Defendants.

_____ /

**DEFENDANTS SNYDER, JUSTHAM, PIERCE, SIMS, SOTO, JOHNSTON AND
SCOTT'S MOTION TO STRIKE PLAINTIFF'S NOTICE OF APPEAL**

COMES NOW, DEFENDANTS MIKE SCOTT in his official capacity as Sheriff of Lee County, Florida; MIKE SCOTT in his individual capacity as Sheriff of Lee County, Florida; RICHARD SNYDER, RYAN JUSTHAM, STEPHAN PIERCE, GENE SIMS, PEDRO J. SOTO, MIKE JOHNSTON, by and through their undersigned counsel, and hereby move to Strike Plaintiff's Notice of Appeal and as grounds therefore would state:

1. Plaintiff Meister filed a Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit on July 25, 2008 appealing this Court's Order of July 16, 2008 which denied:

- (a) Plaintiff's Motion to Order Defendants to Serve Plaintiff's with Defendants' Motions to Compel;
- (b) Plaintiff's Motion to Order Defendants' to Show Cause Why Defendants' Motions Were Not Served Pursuant to Rules; and
- (c) 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.

2. The above orders are non-final, interlocutory orders that are not subject to appeal. As such, the United States Court of Appeals for the Eleventh Circuit does not have jurisdiction to consider them.

3. Because the Orders Plaintiff is seeking to appeal are non-final orders, Plaintiff's Notice of Appeal should be Stricken.

MEMORANDUM OF LAW

The Court may strike from a pleading any "insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter." *Federal Rule of Civil Procedure 12(f)*.

The Courts have recognized that notices of appeal may be stricken under *Rule 12(f)*. See Anderson v. Campbell, 2007 WL 2479319 (2nd No. Distr. of FL 2007). *citing Theriault v. Silver*, 574 F.2d 197 (5th Cir. 1978).

Pursuant to 28 U.S.C. §1291, Federal Appellate Courts have jurisdiction over appeals of all final decisions of the district courts. Pursuant to 28 U.S.C. §1292, Federal Appellate Courts also have jurisdiction over appeals of interlocutory orders. However, their jurisdiction is limited to interlocutory orders involving injunctions, appointing

receivers, and those determining the rights and liabilities of parties to admiralty cases. They also may entertain interlocutory appeals that involve 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 termination of the litigation." See 28 U.S.C. §1292(b).

The interlocutory order that is the subject of Plaintiff's Notice of Appeal does not fall within any of the above categories of appealable interlocutory orders. As such, Plaintiff is not allowed, and not entitled to appeal the Order. Based on the foregoing, Plaintiff's Notice of Appeal should be stricken.

WHEREFORE, Defendants MIKE SCOTT, RICHARD SNYDER, RYAN JUSTHAM, STEPHAN PIERCE, GENE SIMS, PEDRO J. SOTO, and MIKE JOHNSTON respectfully request that Plaintiff's Notice of Appeal dated July 25, 2008 be stricken.

Respectfully submitted,

/s/ Robert C. Shearman
Robert C. Shearman

I HEREBY CERTIFY that on August 8, 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: RICHARD M. PIERRO, JR., ESQUIRE and MARK M. LEVITT, ESQUIRE, Allen, Norton & Blue, 324 S. Hyde Park Ave., Suite 225, Tampa, FL 33606-4127. I further certify that I mailed the foregoing document and the

Notice of Electronic Filing by first-class mail to the following non-CM/ECF participants:

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By: /s/ Robert C. Shearman

Robert C. Shearman
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