

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

CASE NO. 2:06-cv-444-FtM-34SPC

CHRISTIAN F. MEISTER,

Plaintiff,

v.

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; each of J.J. CARROLL, RICHARD SNYDER, RYAN JUSTHAM, STEPHAN PIERCE, GENE SIMS, PEDRO J. SOTO, MIKE JOHNSTON, each of the foregoing, jointly and severally,

Defendants.

**PLAINTIFF'S ADDITIONAL FACTS AND ARGUMENTS AND/OR SUPPLEMENT RE
THE FIVE (5) PLAINTIFF'S MOTIONS, DOC. #234**

COMES NOW the Plaintiff CHRISTIAN MEISTER, proceeding Pro Se (hereinafter "MEISTER"), and hereby files PLAINTIFF'S ADDITIONAL FACTS AND ARGUMENTS AND/OR SUPPLEMENT RE THE FIVE (5) PLAINTIFF'S MOTIONS, DOC. #234, and states as follows:

1. The Plaintiff, on May 7, 2009, has filed Doc. #234 [FN-0958], and the Plaintiff hereby supplements the same.

[FN-0958] The Plaintiff has filed five (5) separate motions: (1) PLAINTIFF'S MOTION TO RECUSE JUDGE PRESNELL, (2) PLAINTIFF'S MOTION TO VACATE SUMMARY JUDGMENT GRANTED IN FAVOR OF THE DEFENDANTS, (3) PLAINTIFF'S MOTION TO VACATE THE MOTIONS TO DISMISS GRANTED IN FAVOR OF THE DEFENDANTS TO THE EXTENT THAT THE MOTIONS TO DISMISS

HAVE BEEN DENIED AS MOOT, (4) PLAINTIFF'S MOTION TO VACATE "FINAL" JUDGMENT ENTERED IN FAVOR OF THE DEFENDANTS, and (5) PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE PLAINTIFF'S FIFTH AMENDED COMPLAINT IN ORDER TO REFLECT THE SATISFACTION OF THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES' NOTICE REQUIREMENT.

2. The herein stated facts and arguments in the Instant Motion ("Supplement") are in addition to the previously filed Motions (Doc. #234).

3. The Plaintiff, on October 7, 2008, filed a Motion for an order to show cause why a contempt citation should not issue (Doc. #213). The Lee County School District through Counsel filed, on October 15, 2008, a Response to order to show cause (Doc. #214).

4. This Court did not adjudicate on this matter (Doc. #213).

5. In addition to the previously argued reasons, Summary Judgment was not appropriate in this case and substantial justice is chilled by the Granting of Summary Judgment because this Court did not adjudicate on an important matter of discovery (Doc. #213). The Defendants' motions for summary judgment were premature because the Plaintiff, in light of this Court's conduct in which it did not adjudicate on the Plaintiff's pending motion (Doc. #213), was deprived of his opportunity to establish a genuine issue of material fact by inspecting and copying relevant documents at the academy in Fort Myers.

6. The Defendants' Motions for summary judgment were premature because there had not been adequate time for discovery, and there could not have been adequate time for discovery because this Court has refused to adjudicate the Plaintiff's Motion (Doc. #213). As a result, the Plaintiff was deprived of his Procedural Due Process rights.

7. The Plaintiff was prejudiced by being deprived of his Equal Access rights where this Court adjudicated on the Motions filed by the Defendants represented by Counsel and where this Court did not adjudicate the Motion filed by the Pro Se Plaintiff who is not an attorney.

8. The failure of this Court to adjudicate on the matter of discovery is prejudice to the

Plaintiff.

9. The Plaintiff is entitled to adjudication of motions filed by him. To deny the Plaintiff of the adjudication is to deny the Plaintiff his rights to Procedural Due Process, Equal Access, Trial by Jury, Equal Protection, and Substantive Due Process (Hereinafter “**DATES RIGHTS**”).

10. Relief is warranted in that the Plaintiff is entitled to Equal Access.

11. Relief is warranted in that the Plaintiff is entitled to Procedural Due Process.

12. Relief is warranted in that the Plaintiff who is proceeding Pro Se is entitled to the same Constitutional protections than the Defendants who are represented by an attorney, i.e., the Plaintiff is entitled to the protections that are guaranteed by the Seventh Amendment and the Fourteenth Amendment of the United States Constitution.

13. Relief is warranted under the circumstances.

14. The Instant Motion is timely filed.

15. The Undersigned is exempt from having to provide legal Citations because he is not trained to provide them. **MEISTER IS NOT AN ATTORNEY**. Although, it is encouraging to have them included in Meister’s legal work. Notwithstanding such exemption, the Plaintiff is entitled to all Constitutional Protections regardless of whether he is represented by an attorney.

16. In the event that the Plaintiff’s Instant Motion is denied, the Plaintiff’s rights will be severely prejudiced.

17. Any of Plaintiff’s Arguments and Citations of Authority located in footnotes is fully incorporated herein.

18. Any of Plaintiff’s Arguments and Citations of Authority located in any of the attached Exhibits, if any, is fully incorporated herein.

BACKGROUND

Plaintiff Meister, on October 6, 2008, informed this Court **that (1)** the School District of Lee County School Board Attorney had acknowledged that “[t]he Academy is in possession of the portion of the requested documents which are records of yourself [Meister] and other cadets of the Academy;” **that (2)** the Undersigned had contacted Attorney Martin, following which event it was arranged that the Undersigned meet Mr. Tim Day, director of the Southwest Florida Criminal Justice Academy, on a specific date, at a specific time—on Tuesday, August 26, 2008, at 9 a.m. in order to inspect and copy documents (Doc. #213 at 2); **that (3)** the Undersigned, on August 26, 2008, arrived at the location at the stated time and place, was permitted for a brief period to inspect the relevant documents, and—following the events in which Mr. Tim Day began to patronize the Undersigned and began to treat him like a child-like student [FN-1624].

^{_____}
[FN-1624] Among other things, Tim day told Meister that he (Meister) was not going to “play attorney” while the Undersigned attempted to mend amicably such matters by informing the director (Tim Day) that the Undersigned was specifically there to conduct court business as an officer of the court and that it was neither the place nor the time to discuss any personal matters and/or issues the director may be having with Meister.

Tim Day then demanded that the Undersigned cease to inspect the documents at once and that the Undersigned leave the location, upon which the Undersigned immediately complied; **that (4)** the Undersigned did not receive any copies despite the fact that Tim Day through his counsel and Meister had agreed to permit the inspection and copying by the Undersigned.

This Court refused and/or failed to consider the Plaintiff’s motion (Doc. #213) despite the fact that the Plaintiff sought relief from this Court, and despite the fact that Mr. Tim Day had refused to provide the Undersigned the requested and initially agreed upon discovery and despite the fact that Day had failed to obey a subpoena without adequate excuse in contempt of court.

Federal Rules of Civil Procedure 45(e) (A nonparty’s failure to obey a subpoena without

adequate excuse is contempt of court.)

MEMORANDUM

THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT WERE PREMATURE BECAUSE THE PLAINTIFF, IN LIGHT OF THIS COURT'S CONDUCT IN WHICH IT DID NOT ADJUDICATE ON A PENDING MOTION FILED BY THE PLAINTIFF WAS DEPRIVED OF HIS OPPORTUNITY TO ESTABLISH A GENUINE ISSUE OF MATERIAL FACT BY INSPECTING AND COPYING RELEVANT DOCUMENTS AT THE ACADEMY IN FORT MYERS

(Meister's Citation, 09-0513-0753, uh12b(C)(1)(2)(3)). The Defendants' motions for summary judgment were premature because the Plaintiff, in light of this Court's conduct in which it did not adjudicate on a pending motion filed by the Plaintiff (Doc. #213), was deprived of his opportunity to establish a genuine issue of material fact by inspecting and copying relevant documents at the academy in Fort Myers.

Plaintiff Meister was deprived of his procedural due process and equal protection rights by being deprived of an opportunity to make a showing that a genuine issue of material fact existed re the Defendants Sims,' Soto's, Pierce's, Johnston's affidavits (Doc. #156), and Defendant Carroll's affidavit (Doc #158)

In pertinent part, Meister was denied of an opportunity to inspect and copy the documents at the law enforcement training academy in Fort Myers, Florida, which would have demonstrated that Meister, as a law enforcement officer training recruit, had performed satisfactorily during the Weapons Block of Instructions, and Meister was foreclosed an opportunity to contrast such documents with Defendant Gene Sims' "Affidavit" (signed March 17, 2008) [FN-1427], the contrasting of which would have permitted Meister to make a showing of the existence of a genuine issue of material fact. **Mahan v. Boston Water and Sewer Comm.**, 179 F.R.D. 49 (D. Mass. 1998) (If a litigant can establish that the witness lacks elicited testimony, which is **inconsistent** with the affidavit, the litigant may be able to show the existence of a genuine issue of material fact and overcome the motion for summary judgment.). In the

case at bar, the documents at the Academy would have indicated that Meister had performed satisfactorily during the First Responder Block of Instructions. The (contents of the) documents at the academy would have been **inconsistent** with the statements [FN-1428] in Defendants Sims', Soto's, Pierce's, Johnston's (Doc. #156), and Defendant Carroll's affidavit (Doc #158) [FN-1428].

[FN-1427] Defendant Soto's "Affidavit," signed March 20, 2008; Defendant Pierce's "Affidavit," signed April 2, 2009; Defendant Johnston's "Affidavit," signed April 8, 2009; Defendant Carroll's "Affidavit," signed April 10, 2009.

[FN-1428] Defendant Sims stated in his affidavit that, for example, "Meister struggled" and required "attention." Defendant Soto, who was "a Lead Instructor at the Academy and taught the 'First Responder'" training session for the 106th Law Enforcement Class," stated in his affidavit that, for example, he (Soto) "was prepared to give Cadet Meister whatever additional time he needed to complete the block but he [Meister] adamantly refused." Defendant Pierce stated in his affidavit, for example, that "Meister lacked the psychomotor skills," that he lacked "confidence necessary for success in 'Defensive Tactics,'" that Meister "became confused" during class, etc. (Doc. #156, Pierce, Page 2, Paragraph 6). Furthermore, Pierce stated in his affidavit that Meister had issues with "showing up on time," appeared unshaven and not well groomed. Cadet Meister seemed to have issues with other members of his class, his peers, and his instructors. He showed a bad attitude . . . and was unwilling to socialize with other members of his class, or even eat lunch with them He also refused to wear the Lee County Sheriff's Office windbreaker" Defendant Johnston stated in his affidavit that Meister, for example, "requested that the Academy assign him a personal instructor" (Doc. #160, Page 2, Paragraph 6). Defendant Carroll stated in his affidavit that Meister, for example, "exhibited a lack of confidence" (Doc. #158, Carroll, Page 3, Paragraph 10), that Meister ". . . actually held the entire class back," that Meister ". . . had to be virtually dragged through the driving exercises (Doc. #158, Carroll, Page 4, Paragraph 13).

This Court is also reminded that the Defendants' supposed reason for Meister's termination from employment rested on the instructors' such statements about Meister, and that any contradiction thereof establishes the existence of a genuine issue of material fact. **Mahan v. Boston Water and Sewer Comm.**

Not only, following the Plaintiff's request by Motion (Doc. #131), was Meister deprived of an opportunity to file his response to the Defendants' motions for summary judgment (as well as he was deprived of an opportunity to file his response to the motions to dismiss) because this Court in an Order (Doc. #147 at 3) told Meister that he, in essence, had no business of filing documents in this Court if they exceeded the page limitation imposed by this Court, but

also, as a consequence of (1) the Court's failure to adjudicate the Plaintiff's motion in which the Plaintiff had requested that this Court step in concerning the Lee County School District's refusal to make available documents for inspection and copying, and, as a consequence of (2) this Court's Order (Doc. #227) in which the Court Ordered "to terminate from pending status all motions . . .," Meister was deprived of an opportunity to show the existence of a genuine issue of material fact and overcome the motion for summary judgment.

THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT WERE PREMATURE BECAUSE THERE HAD NOT BEEN ADEQUATE TIME FOR DISCOVERY

(Meister's Citation, 09-0513-1640, uvb2z). The Defendants' motions for summary judgment were premature. Most courts will not consider a motion for summary judgment until there has been "adequate time for discovery." **Celotex Corp. v. Catrett**, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986). See also **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 250 n. 5, 106 S.Ct. 2505, 2511 (1986) ("[S]ummary judgment [should] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition."); **F.D.I.C. v. Shrader & York**, 991 F.2d 216, 220 (5th Cir. 1993) ("Summary judgment is appropriate if, *after discovery*, there is no genuine dispute over any material fact.") (Emphasis added). In the case at bar, there could not have been adequate time for discovery because this Court has refused to adjudicate the Plaintiff's Motion (Doc. #213). Had this Court issued an Order regarding the Plaintiff's Motion, the Plaintiff could have taken procedural steps, as needed. Therefore, by the conduct of this Court, the Plaintiff was deprived of his Procedural Due Process.

THE PLAINTIFF WAS PREJUDICED BY BEING DEPRIVED OF HIS EQUAL ACCESS RIGHTS BECAUSE THIS COURT ADJUDICATED ON THE DEFENDANTS' MOTIONS, THE MOTIONS OF WHICH WERE CRAFTED BY ATTORNEYS, BUT

THIS COURT DID NOT ADJUDICATE THE PLAINTIFF'S MOTION, WHICH WAS CRAFTED BY A PRO SE LITIGANT

The adjudication of the Plaintiff's such motion(s) was procedurally and substantially necessary in order to move the case forward before considering the Defendants' motions for summary judgment. The record indicates that this Court has issued Orders concerning any of the Defendants' critical motions, but has refused and/or failed to issue an Order concerning the Plaintiff's critical Motion, Doc. #213. The conduct is suspect of prejudice against the Plaintiff.

WHEREFORE, based upon the foregoing, Plaintiff MEISTER, proceeding Pro Se, hereby requests that the PLAINTIFF'S ADDITIONAL FACTS AND ARGUMENTS AND/OR SUPPLEMENT RE THE FIVE (5) PLAINTIFF'S MOTIONS, DOC. #234, be considered, accordingly.

RESPECTFULLY SUBMITTED,

CHRISTIAN F. MEISTER, Pro Se

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Date: May 14, 2009

CERTIFICATE OF SERVICE

I certify that a copy of the document has been served, by First Class, United States Mail, properly addressed and postage prepaid, to the following counsel of record: Robert C. Shearman, Post Office Box 280, Fort Myers, Florida 33902-0280; Richard M. Pierro, Mark E. Levitt, 324 S. Hyde Park Avenue, Suite 225 Tampa, Florida 33606-4127

Date: May 14, 2009

CHRISTIAN F. MEISTER, Pro Se