

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 07-60534CIV-DIMITROULEAS
Magistrate Judge Robin Rosenbaum

HOWARD K. STERN,
Plaintiff,

vs.

JOHN M. O'QUINN, and
JOHN M. O'QUINN & ASSOCIATES, PLLC.,
d/b/a THE O'QUINN LAW FIRM.

Defendants

**DEFENDANTS' MOTION TO STRIKE PLAINTIFF HOWARD K. STERN'S
UNAUTHORIZED OPPOSITION RESPONSE TO DEFENDANTS' MOTION
AND NOTICE TO AMEND AND CERTIFY FOR IMMEDIATE APPEAL
PURSUANT TO 28 U.S.C. §1292(b) AND FED. R. APP. 5(a),
THIS COURT'S JULY 11, 2008 INTERLOCUTORY ORDER**

Defendants John M. O'Quinn and John M. O'Quinn & Associates, PLLC., d/b/a The O'Quinn Law Firm, by and through undersigned counsel, file this Motion To Strike Plaintiff Howard K. Stern's Unauthorized Opposition Response to the Defendants' Motion and Notice To Amend and Certify For Immediate Appeal this Court's July 11, 2008 Interlocutory Order pursuant to 28 U.S.C. Section 1292(b) and Fed. R. App. 5(a), and, in support thereof, state as follows:

The Interlocutory Appeals Act of 1958, Section 1292(b), of the United States Code, creates a bilevel procedure for establishing appellate jurisdiction to review nonfinal orders in civil actions. The Act permits trial judges to certify for appeal orders that, as in this case, involve a controlling question of law as to which there is substantial ground for difference of opinion and where an

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immediate appeal from the order may materially advance the ultimate termination of the litigation. There is absolutely no provision under the Interlocutory Appeals Act that authorizes the Plaintiff Howard K. Stern to file a Response to the Defendants' Motion To Certify this Court's July 11, 2008 Order for Section 1292(b) appeal. Accordingly, this Honorable Court should grant this Motion To Strike Plaintiff Howard K. Stern's unauthorized Opposition Response.

If and when this Honorable Court enters an order granting permission to the Defendants to appeal, the Defendants will then have ten days to pay the district clerk all the required fees, pursuant to Federal Rule of Appellate Procedure 5(2)(1), and file a Petition For Permission To Appeal in the appellate court. It is only then, that the Federal Rules of Procedure permit the Plaintiff to file a Response. Federal Rule of Appellate Procedure 5(2) specifically provides that "a party may file an answer in opposition or a cross-petition within 7 days after the petition is served." Presently, the Plaintiff is not authorized to file an Opposition Response as he has done here.

WHEREFORE, the Defendants John M. O'Quinn and John M. O'Quinn & Associates, PLLC., d/b/a The O'Quinn Law Firm, respectfully request that this Honorable Court enter an Order granting this Motion To Strike the Plaintiff Howard K. Stern's unauthorized Opposition Response.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on September 2, 2008, this document was e-filed using the CMECF system and that a true and correct copy was served via e-mail to: **L. LIN WOOD, ESQ.**, (llwood@pogolaw.com) Powell Goldstein LLP, *Co-counsel for Plaintiff*, One Atlantic Center, 14th Floor, 1201 W. Peachtree Street, N.W., Atlanta, GA 30309; and **M. KRISTA BARTH, ESQ.** (krista@emsattorneys.com), Eric M. Sauerberg, P.A., *Co-counsel for Plaintiff*, Suite 102, 200 Village Square, Palm Beach Gardens, FL 33410 **NEIL McCABE, ESQ.**, (neilm@oqlaw.com) The O'Quinn Law Firm, 440 Louisiana, Suite 2300, Houston, TX 77002 who are listed as recipients as counsel under said system.

By: S/Roberta G. Mandel
ROBERTA G. MANDEL

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