

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF CULPEPER**

MICHAEL V. McCLARY,

and

CHRISTINA STOCKTON,

Plaintiffs,

v.

SCOTT H. JENKINS, in his official capacity  
as Sheriff of Culpeper County,

and

BOARD OF SUPERVISORS OF  
CULPEPER COUNTY,

Defendants.

**Case Number CL 18-1373**

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**PLAINTIFFS' MOTION TO SUSPEND JUDGMENT**

Plaintiffs Michael V. McClary and Christina Stockton move the Court to suspend its judgment upon the Court's May 28, 2019, letter opinion and final order. Plaintiffs intend to move the Court to reconsider its letter opinion and final order. Given the 21-day jurisdictional limit in Rule 1:1, suspension is necessary to permit Defendants sufficient time to respond to that motion, and the Court sufficient time to consider and rule upon it.

**Facts**

1. Plaintiffs sued Defendants on November 28, 2018.
2. Defendant Board of Supervisors of Culpeper County filed a motion craving oyer, demurrer, and plea in bar on December 20, 2018.

3. Defendant Sheriff Scott H. Jenkins filed his demurrer and plea in bar on January 22, 2019.

4. Board of Supervisors moved for leave to file its amended demurrer on February 14, 2019.

5. The Court granted the Board of Supervisors' motion for leave on March 6, 2019.

6. Plaintiffs responded to all of Defendants' papers, including their demurrers, on May 10, 2019.

7. The Board of Supervisors filed a reply in support of its amended demurrer on May 16, 2019.

8. The Court held a hearing on Defendants' demurrers on May 17, 2019.

9. The Court issued a letter opinion on Defendants' demurrers on May 28, 2019, sustaining the demurrers without leave to amend.

10. As of the date of this filing, the Court has not yet entered a final order, reflecting the Court's May 28, 2019, letter opinion.

11. Plaintiffs mailed a proposed final order, endorsed (and, as appropriate, objected to) by all counsel of record, to the Clerk of the Court on June 14, 2019.

**Argument**

12. The Court's May 28, 2019, letter opinion sustained Sheriff Jenkins' demurrer on three grounds:

- a. First, because three Virginia Code provisions permits him "to enforce the law";

- b. Second, because federal law “expressly authorizes cooperative efforts with state and local governments through cooperative agreements,” including 287(g) Agreements; and
  - c. Third, because the Virginia Attorney General issued an opinion on April 12, 2019, that “opine[d] that there is no Virginia law which precludes a sheriff from entering into cooperative agreements with federal authorities to enforce immigration laws.”
13. Respectfully, the Court’s reasoning is erroneous.
- a. First, the Virginia Code only allows Sheriff Jenkins to enforce Virginia law. But there is no Virginia law allowing Sheriff Jenkins to enter into 287(g) Agreements and enforce federal civil immigration law.
  - b. Second, although federal law may authorize certain conduct, federal authority does not address the issue here: whether the General Assembly has authorized Sheriff Jenkins to enter into a 287(g) Agreement and enforce federal civil immigration law.
  - c. Third, the Virginia Attorney General’s opinion does not address the issue before this Court: whether the Virginia Code *authorizes*, rather than *prohibits*, conduct like that of the Defendants. In any event, that opinion has not been considered, much less approved by acquiescence or otherwise, by the General Assembly because the Attorney General issued the opinion after the 2019 legislative session adjourned.

14. The Court’s May 28, 2019, letter opinion sustained the Board of Supervisors’ amended demurrer “on the same basis as it sustained the Sheriff’s Demurrer.”

a. In addition to the reasons stated above, even if Sheriff Jenkins could engage in certain conduct under Virginia law that alone would not permit the Board of Supervisors to fund that activity. Using Plaintiffs' tax money to fund federal civil immigration law is not a power the General Assembly has expressly or impliedly given to the Board of Supervisors. Thus the Board of Supervisors' actions are unlawful even if Sheriff Jenkins' actions are permitted by law.

15. Plaintiffs intend to file promptly a motion for reconsideration, addressing these and related points with supporting legal authority.

16. Yet once this Court enters its final order, the Court will only retain jurisdiction over this case for 21 days. Rule 1:1(a).

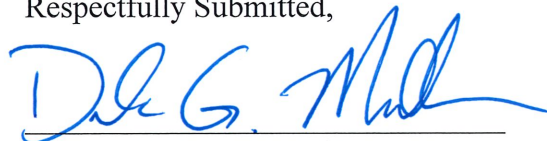
17. Thus, without delay entry of the Final Order, or suspension of the judgment thereon, the Court and the parties would have only 21 days to: (1) coordinate a date to present the motion; (2) timely file appropriate briefs; and (3) rule upon the motion. *See* Rule 4:15.

18. Merely filing the motion will not suffice to preserve the arguments for appellate review. *See* Rule 5:25; *see, e.g., Brandon v. Cox*, 284 Va. 251, 255–56 (2012).

19. To allow the parties sufficient time to present, and this Court sufficient time to consider and rule upon, these arguments, Plaintiffs respectfully request that the Court either delay entry of the final order, reflecting its May 28, 2019, letter opinion or suspend the judgment entered thereon until it rules upon Plaintiffs' motion for reconsideration.

Dated: June 18, 2019

Respectfully Submitted,

  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was transmitted First-Class Mail, postage prepaid, and by electronic mail this day, June 18, 2019, to all counsel of record, to wit:

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