

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ROBERT COTTRELL, MAURICE FITCH, :  
and LEE HENRY McGREW, :  
:  
Plaintiffs, :  
:  
vs. : CIVIL ACTION 08-646-CG-M  
:  
SHERIFF JAMES LOVETT and :  
CHOCTAW COUNTY COMMISSION, and :  
SHERIFF DONALD LOLLEY, :  
:  
Defendants. :

REPORT AND RECOMMENDATION

The Motion to Dismiss filed by Defendant Donald Lolley (Docs. 19-20) has been referred for report and recommendation, under 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.2. Jurisdiction has been invoked in this Court under 28 U.S.C. § 1331, pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 (Docs. 1, 9). After consideration, it is recommended that Defendant Lolley's motion be granted.

The facts are, briefly, as follows. Plaintiffs Robert Cottrell, Maurice Fitch, and Lee Henry McGrew are employees, or former employees, of the Choctaw County Sheriff's Department who have been required to work overtime without compensation (Doc. 9, ¶¶ 7, 14-18). "Defendants operate or have operated in the past, a sheriff department providing law enforcement, emergency and rescue services in the County of Choctaw, City of Butler" (Doc. 9, ¶ 2). Plaintiffs brought this action, alleging a violation of

the Fair Labor Standards Act of 1938, seeking payment of their overtime work as well as their reimbursement costs and attorneys fees (Doc. 9, ¶¶ 22-31).

Defendant Lolley filed a Motion to Dismiss this action, asserting that he is the former sheriff and is, therefore, no longer a public official, which is the proper party to be sued, under Eleventh Circuit law, for a violation of the Fair Labor Standards Act (Docs. 19-20). Plaintiffs have Replied to Defendant's Motion, stating that they have no objection to it as the law cited by Defendant is correct (Doc. 25).

Therefore, it is recommended, without objection from Plaintiffs, that Defendant's Motion to Dismiss be granted (Docs. 19-20). **Since there is no objection to the motion, the "Magistrate Judge's Explanation of Procedural Rights and Responsibilities Following Recommendation..." has not been included and the District Judge may consider this Report and Recommendation without further delay.**

DONE this 6<sup>th</sup> day of February, 2009.

S/BERT W. MILLING, JR.  
UNITED STATES MAGISTRATE JUDGE