

United States Court of Appeals for the Eleventh Circuit.

CASE NO. 02-13418
L.T. No. 02-14049-CIV-MOORE

MARCELLUS M. MASON, JR.,

Plaintiff/Appellant

v.

HIGHLANDS COUNTY BOARD OF COUNTY
COMMISSIONERS, DONALD L. GRAHAM, FRANK LYNCH, JR., BRIAN KOJI, AND
MARIA SOROLIS.

Defendant/Appellees

**On Appeal from the United States District Court
For the Southern District of Florida**

CASE NO. 02-13418
L.T. No. 02-14049-CIV-MOORE
INITIAL BRIEF

Petition for Review Court of Order from the United States District Court
Southern District of Florida
Michael Moore, Judge

Marcellus M. Mason, Jr.
Pro Se
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Sebring, FL 33870
Phone: 863-385-8501

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE
STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1, APPELLANT hereby certifies the following list of individuals and entities are known to me to have an interest in the outcome of this particular case:

Highlands County Board of County Commissioners

Donald L. Graham

Frank Lynch, Jr.

Maria N. Sorolis, Esq.

Brian Koji, Esq.

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not desire oral argument on this matter and is opposed to oral argument

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JURISDICTIONAL STATEMENT

Appellant seeks to invoke the jurisdiction of this court pursuant to 28 U.S.C. § 1291.

Appellant's *Notice of Appeal* was timely filed and docketed with the United States District Court on June 17, 2002. (Doc. 57).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the District Court violate Mason's due process rights?
2. Does a mere one sentence legal conclusion satisfy the pleadings requirements of Rule 8, Fed.R.Civ.P.?
3. Can a district court award an unsolicited an unnoticed summary judgment to a party without making specific findings of fact?
4. Did Mason state a claim under 42 U.S.C. § 1983?
5. Can Defendants Koji and Sorolis or "private attorneys" be held liable under 42 U.S.C. § 1983?
6. Can Defendants Lynch and Graham or "federal officials" be held liable under 42 U.S.C. § 1983?
7. Should Mason have been awarded a summary judgment in this matter?
8. Do Defendants Graham and Lynch have absolute immunity?
9. Has the Southern District of Florida compromised the integrity of the Federal Judiciary?

STATEMENT OF CASE

Mason filed the instant Complaint in the Tenth Judicial Circuit, State of Florida, on or about January 11, 2002. (Doc. 1, Complaint¹) Counts 1-12 states claims under Title VII, Florida Civil Rights Act (FRCA), and 42 U.S.C. §§ 1981, 1983. These counts are directed to Defendant Highlands County only. Highlands County's failure to hire Mason as a budget technician precipitated

this lawsuit. Mason applied for the position of budget technician in November 1999. In Counts Thirteen thru Fifteen, Plaintiff states claims under 42 U.S.C. §§ 1983, 1985, 1986 against Koji, Sorolis, Graham, and Lynch. This action was removed from state court to the S.D. Fla. by the Defendants Graham and Lynch. (Doc. 1).

PROCEDURAL MATTERS

Defendants Koji and Sorolis submitted a motion to dismiss on or about February 13, 2002 that was promptly responded to by Mason. (Doc. 3); *Plaintiff's Response To Defendants Brian And Koji And Maria Sorolis' Motion To Dismiss Amended Complaint And Supporting Memorandum Of Law*, dated February 19, 2002. Defendants Graham and Lynch submitted a motion to dismiss on or about April 12, 2002 that was promptly responded to by Mason. (Doc. 40); *Plaintiff's Response To Defendants Graham And Lynch's Motion To Dismiss And To Enjoin Plaintiff From Filing Similar Lawsuits*, dated April 20, 2002.

Counts 1-12 have been dismissed even though the court never addressed them; nor did the Defendants ask for these claims to be dismissed. (Doc. 52);(Doc. 56). The district court refused to act on the following filings that Mason submitted, hereafter and collectively, "languishing motions":

- *Plaintiff's Motion For Change of Venue Or Plaintiff's Motion To Transfer*, dtd. February 27, 2002.
- *Plaintiff's Motion To Remand* dtd. March 7, 2002; *Addendum To Plaintiff's Motion To Remand*, dtd. March 9, 2002.
- *Plaintiff's Motion For Default Judgment Against Defendant Lynch*, dtd. March 18, 2002.
- *Plaintiff's Motion To Compel Defendants Graham, Lynch, And Sorolis' Answer To Plaintiff's First Interrogatory For Graham, Sorolis, And Lynch And Motion For Sanctions and Plaintiff's Motion For Sanctions In The Form Of A Default Judgment Against Defendants Graham And Lynch*, dtd. March 7, 2002 and March 23, 2002.

¹ The Complaint is attached to the Defendants notice of removal.

- *Plaintiff's Motion To Direct Defendants Graham And Lynch To File A Response To Plaintiff's Partial Motion For Summary Judgment*, dtd. April 20, 2002
- *Plaintiff's Motion For Default Summary Judgment*, dtd. April 9, 2002
- *Plaintiff's Motion For Sanctions In The Form Of A Default Judgment Against Defendants Graham And Lynch*, dtd. March 23, 2002
- *Plaintiff's Motion To Exceed The Interrogatory Limitation*, dtd. March 8, 2002.

Not only did the district court refuse to rule on the foregoing motions, but the Defendants Graham and Lynch refused to respond to any of the foregoing motions. Additionally, the district court refused to compel the Defendants Graham and Lynch to respond to these motions even when Mason specifically informed the court of the failure of Defendants Graham and Lynch to respond to pending motions. See *Plaintiff's Objections To Report And Recommendation Dated May 13, 2002 Plaintiff's Request For Publication*, pgs. 3, 4, hereafter, "*Objections To R&R* ."

STATEMENT OF MATERIAL UNDISPUTED FACTS

In Counts Thirteen thru Fifteen, Plaintiff states claims under 42 U.S.C. §§ 1983, 1985, 1986. These Counts state claims against Defendants Graham, Lynch, Sorolis, and Koji's for behavior related to Case No. 99-14027-CIV-Graham. Mason's allegations supporting these claims are fully set forth in ¶¶92-164 of this Complaint. All of the facts stated below are in the public record. Donald L. Graham and Frank Lynch were the so-called federal judges that presided over this matter. Additionally, Defendants Koji and Sorolis have admitted to the following in their *Defendants Koji And Sorolis' Response To Plaintiff's Partial Motion For Summary Judgment*, hereafter "*Response to Summary Judgment*":

1. Each and every Defendant in the action, Case No. 99-14027-CIV, were government defendants or their agents. See *Response to Summary Judgment*, pg.2, ¶2.
2. Highlands County Board of County Commissioners is political subdivision within the State of Florida. pg.2, ¶3.

3. Maria Sorolis and Brian Koji of the lawfirm Allen, Norton & Blue were the attorneys of record in Case No. 99-14027-CIV-Graham. Id. Pg.2, ¶4.
4. On June 15, 2000, Maria Sorolis asked the Court for a preliminary injunction. (DE #199)². Id. pg.2, ¶5.
5. Maria Sorolis asked the court: “Defendants move the Court for an injunction prohibiting Plaintiff from contacting any of the Defendants and/or their supervisory employees, including but not limited to, Mary Myers, Fred Carino, Carl Cool, their insurers or its representatives, except through counsel with regard to any matter that is related to the lawsuit pending before this Court.” (DE #199, pg. 4). Id. pg.2, ¶6.
6. The Magistrate, Frank Lynch, Jr. terms his order of June 19, 2000, as “***a pretrial discovery issue and not an injunction issue per se.***” (DE # 201). Id. pg.3, ¶10.
7. Brian Koji filed a *Defendants’ Renewed Motion For Preliminary Injunction*. (DE #231). Id. pg.3, ¶11.
8. In their *Defendants’ Renewed Motion For Preliminary Injunction*, Brian Koji asks the Court for the following: “Defendants request that this Court enter an Order prohibiting Plaintiff from directly contacting them for any matter;” (DE #231, pg. 3). “Defendants respectfully renew their Motion for a Preliminary Injunction prohibiting the Plaintiff from contacting the supervisory employees of the Defendants or the individual Defendants directly, and directing Plaintiff to make all public records requests through the undersigned counsel.” (DE #231, pg. 4). Id. pg. 4, ¶12.
9. On July 25, 2000, the **Magistrate Judge**, Frank Lynch, Jr., issued the following directives:
(1)Plaintiff shall be prohibited from contacting any of the Defendants, including their supervisory employees and/or the individual Defendants, regarding any matter related to this case; (2)Plaintiff shall correspond only with Defendants’ counsel including any requests for public records; (3)Plaintiff shall be prohibited from contacting any of the named Defendants in this case, including their supervisory employees and/or the individual Defendants, who are parties in other actions (Fellin, ST. Germain, etc, etc.) and are represented by counsel in those other actions regarding any matter

² (DE #_) refers to Docket entry number in Case No. 99-14027-CIV-Graham.

related to those cases since Plaintiff is not an attorney or the attorney of record for the plaintiffs in those other cases. (DE #246, pgs. 2,3). Id. pg. 4, ¶14.

10. The Magistrate, Frank Lynch, Jr. terms his order of July 25, 2000, as “**a pretrial discovery issue and not an injunction issue per se.**” (DE # 246, pg.1). Id. pg. 4, ¶15.
11. On 3/2/01 Maria Sorolis submitted their *Defendants’ Motion For Sanctions In The Form of Dismissal of Plaintiff’s Action And Supporting Memorandum of Law.* (DE #511). This motion seeks dismissal based upon the Plaintiff’s alleged failure to comply with the injunctions at issue here, (DE #201);(DE #246). (DE #511). Maria Sorolis asked for a dismissal of the Plaintiff’s lawsuit because they alleged that the Plaintiff communicated with his government. Id. pg. 5, ¶19.
12. On 4/9/01 Brian Koji filed *Defendants’ Second Motion For Sanctions In The Form of Dismissal of Plaintiff’s Action And Supporting Memorandum of Law.* (DE #646). This motion was based on Brian Koji’s premise: “Plaintiff’s willing refusal to comply with Court’s Orders warrants dismissal of Plaintiff’s remaining claims as directed in the Court’s June 19th and July 25th, 2000, order.” Id. pg. 6, ¶20.
13. On May 31, 2001, Frank Lynch, Jr. rendered a report and recommendation that recommended dismissal of the Plaintiff’s action because of alleged violations of court orders of “June 19th and July 25th, 2000, ” or (DE #201);(DE #246). (DE #766). Id. pg. 6, ¶21.
14. On 6/15/01, Mason filed his *Plaintiff’s Objections To R&R (DE # 766) Dismissing Plaintiff’s Complaint* . (DE #783). Again the Plaintiff challenges the legitimacy of the injunctions in question, (DE #202);(DE E246). Id. pg. 7, ¶22.
15. On June 20, 2001, Donald L. Graham, a so-called District Judge, adopted the Magistrate’s R&R of May 31, 2001, (DE #766), in full and dismissed the Plaintiff’s action. (DE #791). Just like that Plaintiff’s lawsuit went out the window, finished, kaput, done. Donald L. Graham cited no legal authority for injunctions, *DE #201);(DE #246), that this dismissal was premised on. Graham claims he did a “de novo” review, notwithstanding the fact that the order is only two pages long.

16. At no time during this action, 99-14027-CV-Graham, did Defendants Graham, Lynch, Sorolis, and Koji cite any legal authority for the court orders of June 19, 2000, (Doc. 201), and July 25, 2000, (Doc. 246). Id. pgs. 3, 4, 5, 6, and 7; ¶¶7, 13, 15, 19, 20, 23.
17. On June 25, 2001, Mason filed a notice of appeal. (Doc. 795). This case has been docketed with this court bearing Case No. 01-13664.
18. On September 20, 2001, or almost three months after the notice of appeal was filed³, Defendant Graham rendered an order stating in part that:

Plaintiff Marcellus N. Mason is Permanently enjoined from filing any additional pleadings in case numbers 99-14027-CIV-GRAHAM, 00-14116-CJV-GRAHAM, 00-14201-Civ-GRAHAM, 00-14202-CIV-GRAHAM, 00-14240-CIV-GRAHAM, 01-14074-CJV-GRAHAM, 01-14078-CJV-GRAHAM, and 01-14230-Civ-GRAHAM or from filing any new lawsuit which relates in any way to Plaintiff Marcellus M. Mason's former employment and/or subsequent interactions with Defendants without first receiving permission from the Court, as set forth below.

(Doc. 878, pg. 8).

SUMMARY OF THE ARGUMENT

The district court violated Mason's right of due process by improperly "managing" this case. The district court "managed" this case to the prejudice of Mason by ignoring and refusing to rule on every single motion Mason submitted to the Court. Moreover, the district refused to compel Defendants Graham and Lynch to respond to lawfully submitted motions.

Defendant Highlands County's mere one sentence legal conclusion fails to satisfy the pleadings requirements of Rule 8, Fed.R.Civ.P. The Defendant has resisted every opportunity to set forth a factual basis for its one sentence legal conclusions that they call affirmative defenses.

The district court awarded a summary judgment to the Defendants that the Defendants themselves never asked for. Mason never had notice of this summary judgment. Finally, the facts of this case do not warrant summary judgment to the Defendants.

³ It is a well settled point of law and not fairly debatable that the filing of a notice of appeal divests the district court of jurisdiction of the matter, and further that jurisdiction of the matter lies solely with the appellate court. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); Fogade v. ENB Revocable Trust, 263 F.3d 1274, 1286 (11th Cir. 2001).

Mason has stated a claim under 42 U.S.C. § 1983. At no during this action did the district court discuss what it takes to state a claim under section 1983. There are only two allegations Mason needed to aver in order to state a *prima facie* case under section 1983.

Defendants Koji and Sorolis or “private attorneys” are liable under 42 U.S.C. § 1983 because they have a principal-agent with relationship with their state actor client, Highlands County. Moreover, Defendants Koji and Sorolis are held liable under section 1983 because they acted in concert with their state actor client, Highlands County.

Defendants Lynch and Graham or “federal officials” can be held liable under 42 U.S.C. § 1983 when they violate constitutional rights. Additionally, federal actors can be held liable under 42 U.S.C. § 1983 when they act in concert with a state actor.

Mason should have been awarded a summary judgment. With respect to Counts 13-15, the facts are not in dispute. Additionally, Defendants Graham and Lynch refused to respond to Mason’s summary judgment motion. The only question to be resolved is a legal one.

Defendants Graham and Lynch do not have absolute immunity. Graham and Lynch do not have absolute immunity because the orders in question were not of a judicial nature as Mason has a First Amendment right to communicate with his government at all times. Defendants Graham and Lynch do not have judicial immunity because they engaged in rule-making and acted as prosecutors. Defendants Graham and Lynch do not have absolute immunity because they acted in complete absence of jurisdiction because public records, under Florida law, are not the business of a federal judge. Additionally, Graham and Lynch violated the Tenth Amendment.

The Southern District of Florida compromised the integrity of the Federal Judiciary. The district court should be disqualified because it has shown blatant acts of prejudice. The district court has made extra-judicial decisions. The district court mismanaged this case. The district court committed acts of dishonesty. The district court has acted as an advocate for Defendants Graham and Lynch.

ISSUE ARGUMENTS

- 1. The District Court violated Mason’s due process rights.**

“Failure to consider and rule on significant pretrial motions before issuing dispositive orders can be an abuse of discretion.” Chudasama v. Mazda Motor Corporation, 123 F.3d 1353, 1367 (11th Cir. 1997). “[A] cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.” Zipperer v. City Of Fort Myers, 41 F.3d 619 (11th Cir. 1995). Mason’s right to prosecute his lawsuit was disrespected and undermined by the district court. The only motions that the district court saw fit to respond to was the Defendants motions to dismiss and motion for enlargement of time. (Doc. 3); (Doc. 40). None of the motions submitted by Mason were ever acted upon by the district court. See above, PROCEDURAL MATTERS, “languishing motions”. The district court simply stated that all of these motions were “moot.” (Doc. 52);(Doc. 56). Whereas Defendants Graham and Lynch failed to file a single response to any of the foregoing “languishing motions”; according to Local Rule 7.1.C, all of these motions should have granted by default. “Each party opposing a motion shall serve an opposing memorandum of law not later than ten days after service of the motion as computed in the Federal Rules of Civil Procedure. Failure to do so may be deemed sufficient cause for granting the motion by default.” Local Rule 7.1.C. Inherent in the Court’s decision to ignore Mason’s motions are the following untenable legal conclusions that the following type of motions would have had no possible effect on the outcome of this case:

- A motion for change of venue or transfer to the M.D.Fla.
- A motion to compel demanding that the Defendants Graham and Lynch state the legal and factual basis for their claims of judicial immunity would have no possible effect on the outcome of this case.
- A motion to remand
- Defendants Graham and Lynch need not respond to summary judgment motions.

The district court intentionally “managed” this case to the prejudice of the Plaintiff. All Plaintiff’s pending motions are due to be granted by default.

- 2. Defendants have asserted mere one sentence legal conclusions that do not meet the pleading requirements of Rule 8, Fed.R.Civ.P.**

On or about October 24, 2001, Mason submitted his *Plaintiff's Motion To Strike Affirmative Defenses, Or In The Alternative, Plaintiff's Motion For A More Definite Statement*. See also *Plaintiff's Second Motion To Strike Affirmative Defenses, Or In The Alternative, Plaintiff's Motion For a More Definite Statement*. These motions attack the mere one-sentence legal conclusions that the Defendants asserted as affirmative defenses in their *Answer and Affirmative Defenses*. None of these claimed affirmative defenses set forth a factual basis. Examples of these legal conclusions include, but are not limited to, the following:

- Plaintiff's claims constitute impermissible claim splitting" and, as such, may not be maintained separate from his numerous prior state and federal lawsuits against Defendants. *Defendant's Answer and Affirmative Defenses To Plaintiff's Amended Complaint*, page 11.
- Plaintiff's claims are barred in whole or in part by the doctrine of *res judicata*. *Id.*
- Plaintiff's claims are barred in whole or in part by the doctrine of collateral estoppel. *Id.*
- Plaintiff's claims are barred in whole or in part by the applicable statute of limitations. *Id.*

These asserted, but not pleaded, "affirmative defenses" or legal conclusions have been soundly rejected by this Court. In *Anderson v. District Bd. of Trustees of Fla. Comm. College*, 77 F.3d 364 (11th Cir. 1996) this Court held:

The answer filed by the defendants asserted fourteen affirmative defenses, each one sentence in length. None of these affirmative defenses mentions any of the numbered counts of the plaintiff's complaint; none of the defenses refers to, or even acknowledges, any of the constitutional, statutory, or regulatory provisions cited in the complaint. In short, these affirmative defenses are as incomprehensible as the complaint. The defendants' third affirmative defense asserts that: "Defendants in both their individual and official capacity enjoy absolute and/or qualified immunity." Following several rounds of discovery, the individual defendants moved the district court for summary judgment on this defense.

See also *Byrne v. Nezhāt*, 261 F.3d 1075, n. 108; 2001 U.S. App. LEXIS 18343; (11th Cir. 2001).

Other courts have similarly rejected mere legal conclusions cloaking under the guise of an affirmative defense. "Affirmative defenses are pleadings and, therefore, are subject to all pleadings requirements of the Federal Rules of Civil Procedure." *Heller Fin., Inc. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286 (7th Cir. 1989). In *Heller*, the Court affirmed the trial court's decision to strike the defendants' affirmative defenses because "they are nothing but bare bones conclusory allegations.

“Affirmative “[d]efenses which amount to nothing more than mere conclusions of law and are not warranted by any asserted facts have no efficacy.” Shechter v. Comptroller Of City Of New York, 79 F.3d 265 (2nd Cir. 1996). In Shechter, the court rejected the following affirmative defenses: “The defendants were, at all times relevant to the amended complaint, government officials immune from suit under both the doctrines of absolute and qualified immunity.” “[A] defendant nevertheless must plead an affirmative defense with enough specificity or factual particularity to give the plaintiff “fair notice” of the defense that is being advanced.” Woodfield v. Bowman, 193 F.3d 354, 363 (5th Cir. 1999). See also Sales v. Grant, 224 F.3d 293, 296 (4th Cir. 2000). In their reply to these motions to strike, the Defendants stated: “To the extent Plaintiff seeks additional information concerning the applicability of each of the asserted affirmative defenses, Plaintiff’s proper recourse is to seek such information through discovery, such as Interrogatory requests.” (Doc. 5, pg.1); “Defendants have no duty to spell out every single fact supporting their affirmative defenses at this point in the litigation. That is one of the purposes of the discovery process.”. (DE #16), Page 2. However, when Mason filed his *Plaintiff’s Motion To Compel Defendants’ Answer to Plaintiff’s Second Interrogatory For The Defendant Highlands County Board Of County Commissioners And Plaintiff’s Motion To Strike Affirmative Defenses* in order to force the Defendants to set forth a factual basis for their claimed affirmative defenses, the Defendants still refused to assert a factual basis for their affirmative defenses. See *Interrogatory 6*, attached thereto. Defendants’ affirmative defenses are due to be stricken.

3. The district court cannot award an unsolicited summary judgment to a party without making specific findings of fact and without giving notice to the adverse party.

The order affirming and adopting the R&R that explicitly closed the entire case was improper because there were no motions to dismiss or summary judgment motions addressed to Counts 1-12 of this action. (Doc. 52);(Doc. 56). Counts 1-12 could not have been dismissed on a motion to dismiss even if a motion to dismiss was directed towards Counts 1-12 because the Defendant,

Highlands County had already answered the Complaint with respect to Counts 1-12. See *Defendant's Answer And Affirmative Defenses To Plaintiff's Amended Complaint*, dated 1-31-02. Byrne v. Nezhat, 261 F.3d 1075 n. 35 (11th Cir. 2001)(holding that it is improper to file a motion to dismiss after answering the complaint). Additionally, Mason received absolutely no notice that Counts 1-12 were even being considered for summary judgment. Rule 56, Fed.R. Civ. P. states that a summary judgment motion "shall be served at least 10 days before the time fixed for the hearing." The requirement of a ten-day notice of summary judgment is not just a procedure technicality that can be summarily dismissed, but it must be strictly enforced. Burton v. City Of Belle Glade, 178 F.3d 1175, 1203-4 (11th Cir. 1999). Even if the Defendants' motion to dismiss were converted to summary judgment with respect to Counts 1-2, Mason was still required to have a ten-day notice. See U.S. v. One Colt Python .357 Cal. Revolver, 845 F.2d 287 (11th Cir. 1988) ("when the district court converts a motion to dismiss into a motion for summary judgment, the 'bright-line' ten-day notice requirement is stringently enforced."). The dismissal of Counts 1-12 cannot lawfully be affirmed and must be reversed.

4. Mason has stated claims under 28 U.S.C. §§ 1983, 1985, 1986.

Mason properly objected to the R&R. See *Objections to R&R*. In the R&R and the order affirming the R&R, the Court went beyond the four corners of the Complaint and its attachments when it passed upon the Defendants' motions to dismiss. (Doc. 52)(Doc. 56). "When considering a district court's order granting a Fed.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim, we may look only to the facts alleged in the naked complaint, and not beyond." Emory v. Peeler, 756 F.2d 1547, 1550 n.3 (11th Cir. 1985). The R&R and the Defendants motion to dismiss mentions an injunction entered in case No. 99-14027, (Doc 878), which is not mentioned in the Complaint. (Doc. 40, pg. 3);(Doc. 40); See also Defendants Koji and Sorolis *Notice of Filing Supplemental Authority*. Plaintiff objected to this tactic. See *Objections to R&R*, pg. 9,10; and *Plaintiff's Motion To Strike Defendants' Notice of Filing Supplemental Authority*.

The district court has adamantly refused to discuss what it takes to state claims under sections 1983, 1985, and 1986; instead the Court has simply chose to make the personal opinion that the action is frivolous. (Doc. 52);(Doc. 56). Mason's position is fully set forth in the record. See (1)*Plaintiff's Response To Defendants Brian And Koji And Maria Sorolis' Motion To Dismiss Amended Complaint And Supporting Memorandum Of Law*; pgs., 4-8; (2) *Plaintiff's Response To Defendants Graham And Lynch's Motion To Dismiss And To Enjoin Plaintiff From Filing Similar Lawsuits*, pgs. 8-9.

Rule 12(b)(6), Fed.R.Civ.P is used to test the sufficiency of the Complaint only; and its purpose is not to allow the Court to test the truthfulness or accuracy of the Complaint or its supporting allegations. Brooks v. Blue Cross and Blue Shield, 116 F.3d 1364, 1369 (11th Cir.1997) ("The purpose of a Rule 12(b)(6) motion is to test the facial sufficiency of the statement of claim for relief...[f]or the purposes of the motion to dismiss, the complaint must be construed in a light most favorable to the plaintiff and the factual allegations taken as true."). See also Conley v. Gibson, 355 U.S. 41, 45 (1957). The legal standard for dismissal is extremely high by design. See Brooks v. Blue Cross and Blue Shield, 116 F.3d 1364,1369 (11th Cir. 1997) ("*We hasten to add that this motion is viewed with disfavor and rarely granted. Dismissal of a claim on the basis of barebone pleadings is a precarious disposition with a high mortality rate*"). "In order to state a cause of action under § 1983, the plaintiff must allege only two things: (1) some person has deprived him or her of a federal right; and (2) that he or she acted under color of state law." McKinley v. Kaplan, 177 F.3d 1253 (11th Cir. 1999). See also Bernheim v. Litt, 79 F.3d 318 (2nd Cir. 1996)(quoting Gomez v. Toledo, 446 U.S. 635, 640 (1980)); Harrington v. Harris, 118 F.3d 359 (5th Cir. 1997). "In interpreting Federal Rule of Civil Procedure 8, which governs the filing of complaints, the Supreme Court has held that a plaintiff need only set out "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." That requirement is no different in cases brought under Section 1983. Indeed, the Court has explicitly held that courts may not apply a "heightened pleading standard" over and above the dictates of Federal Rule of Civil Procedure 8(a) to claims under Section 1983." Marsh v. Butler

County, Alabama, 225 F.3d 1243, 1246 (11th Cir. 2000)(quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). Mason averred the following in his Complaint:

- Defendant was acting under the color of state law. *Complaint, ¶90, Page 10.*
- This order of June 19, 2000 stated, “{Plaintiff shall be prohibited from contacting any of the Defendants, including their supervisory employees and/or the individual Defendants, regarding any matter related to this case. Plaintiff shall correspond on with Defendants’ counsel.” Lynch cites no legal authority for this order. Lynch threatened to dismiss Mason’s lawsuit if Mason violated this order. *Complaint, ¶102, Page 11.*
- Lynch’s Order of July 25, 2000 states:1) Plaintiff shall be prohibited from contacting any of the Defendants, including their supervisory employees and/or the individual Defendants, regarding any matter related to this case;2)Plaintiff shall correspond only with Defendant’s counsel including any requests for public records;3) Plaintiff shall be prohibited from contacting any of the named Defendants in this case, including their supervisory employees and/or the individual Defendants, who are parties in other actions (Fellin, St. Germain, etc;) and are represented by counsel in those other actions regarding any matter related to those cases since Plaintiff is not an attorney or the attorney of record for the plaintiffs in those other cases. Lynch threatened to dismiss Mason’s lawsuit if Mason violated this order. *Complaint, ¶109, Page 12.*
- Lynch, Graham, Koji and Sorolis’ actions against Mason were in violation of the First Amendment of the United States Constitution for rights protected under 42 U.S.C. §1983. *Complaint, ¶130, Page 14.*

“A judge cannot allow the personal view that the allegations of a pro se complaint are implausible to temper his duty to appraise such pleadings liberally.” Slavin v. Curry, 574 F.2d 1256, 1260 (5th Cir. 1978)⁴. See also Denton v. Hernandez, 504 U.S. 25, 33 (1992)(“An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff’s allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be “strange, but true; for truth is always strange, Stranger than fiction.””). The district court is simply not empowered to dismiss a lawsuit simply because it does not want to believe that a co-worker, colleague, and personal friend is capable of illegal behavior.

Additionally, Mason’s claims under section 1983 are supported by the fact that the Defendants Graham and Lynch have a duty to uphold the Constitution of the United States.

⁴ Decisions by the former Fifth Circuit issued before October 1, 1981 are binding precedent in the

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _ _ _ under the Constitution and laws of the United States. So help me God.' 28 U.S.C. § 453.

"Nonfeasance as well as misfeasance will support a Section 1983 claim." Grandison v. Smith, 779 F.2d 637 (11th Cir. 1986). See also Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979) ("purposeful nonfeasance of such magnitude could serve as the basis of tort liability under section 1983").

Defendants Graham and Lynch failed in their duty to stop Sorolis, Koji, and their state actor client, Highlands County from violating the Plaintiff's right to petition the government under the First Amendment.

The district court improperly dismissed this lawsuit based upon the Supreme Court's decision in Neitzke v. Williams, 490 U.S. 319, 326-28 (1989). (Doc. 52, pg. 5). Neitzke's sole purpose was to determine "frivolousness" pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii), which was clearly not an issue in this case. See Marsh v. Butler County, Alabama, 225 F.3d 1243 (11th Cir.2000)(Section 1915 applies only to proceedings in forma pauperis). "[I]t is evident that the failure-to-state-a-claim standard of Rule 12(b)(6) and the frivolousness standard of § 1915(d) were devised to serve distinctive goals...." Neitzke, 490 U.S. 326. "Rule 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations." Neitzke, 490 U.S. 327. The district court conflated the standards of frivolousness and failure to state a claim, a practice which is explicitly condemned by the very same Neitzke Court that district court quoted, so that it could pass upon the allegations of Plaintiff's allegations. Neitzke, 490 U.S. 330.

5. "Private attorneys" can be held liable under section 1983

Defendants Koji and Sorolis' claim that as "private attorneys" they cannot be sued under 42 U.S.C. § 1983 is patently frivolous and totally devoid of merit. (Doc. 3, pg. 5). It is undisputed that the Defendants Koji and Sorolis Koji and Sorolis acted in behalf of their state actor client Highlands County.

Eleventh Circuit. See Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

Defendants Koji and Sorolis as attorneys of record for their state actor client, Highlands County, have a principal-agent relationship that is recognized in every jurisdiction in the United States. The actions of the agent bind the principal. State Ex Rel. Gutierrez v. Baker, 276 So.2d 470, 471 (Fla. 1973) ("It is a general rule that a client is bound by the acts of his attorney within the scope of the latter's authority."). "Generally, an attorney serves as agent for his client; the attorney's acts are the acts of the principal, the client." Soro v. Bank Of Miami, 537 So.2d 1135 (Fla.App. 3 Dist. 1989). See also McNeal v. Wainwright, 722 F.2d 674, 677 (11th Cir. 1984)

"[O]ur cases to hold, to act "under color of" state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting "under color" of law for purposes of § 1983 actions. . . ; [a]nd it is of no consequence in this respect that the judge himself is immune from damages liability. Immunity does not change the character of the judge's action or that of his co-conspirators. . . [P]rivate parties who corruptly conspire with a judge in connection with such conduct are thus acting under color of state law within the meaning of § 1983 as it has been construed in our prior cases." Dennis v. Sparks, 449 U.S. 24, 28-29 (1980). "Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,[]" Lugar v. Edmondson Oil Co., 457 U.S. 922, 941 (1982).

6. Federal officials can be held liable under section 1983.

Defendants Graham and Lynch have claimed that because they are "federal officials" they cannot be held liable under section 1983. (Doc. 40, pg. 10). Notwithstanding this totally frivolous claim, the district court has absolutely refused to address this issue. However, given this utter failure, there are at least two occasions when a "federal official" can be held liable under section 1983.

"[W]hen federal officials are engaged in a conspiracy with state officials to deprive constitutional rights, the state officials provide the requisite state action to make the entire

conspiracy actionable under section 1983. 'When the violation is the joint product of the exercise of a State power and off a non-State power then the test under the Fourteenth Amendment and § 1983 is whether the state or its officials played a `significant' role in the result.'" Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979), reversed on other grounds, Hanrahan v. Hampton, 446 U.S. 754 (1980). See also Dennis v. Sparks, 449 U.S. 24, 28 n.4 (1980) ("To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents...."). The Highlands County Board of County Commissioners through its' agents/counselors, Koji and Sorolis, provided the required state actors.

In Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 397 (1971), the U.S. Supreme Court held that a federal actor can be held liable under § 1983 if the federal actor violates a Plaintiff's constitutional rights. See also Butz v. Economou, 438 U.S. 478, 486 (1978).

7. Defendants Graham and Lynch do not have absolute immunity.

Mason repeatedly attacked these illegal orders, 99-14027, (Doc. 201)(Doc. 246), and the district court has adamantly refused to cite legal authority for its actions each time. This case was dismissed based upon the Defendants' motions for sanctions in the form of dismissal and the sole basis for the dismissal of this action was Mason's alleged violations of court orders, (Doc. 201);(Doc. 246). See 99-14027, (Doc. 511);(Doc. 646);(Doc. 766);(Doc. 791). The Appellees have failed to argue the legality of the court orders that led to the dismissal of this case, (Doc. 201);(Doc. 246). These orders, (Doc. 201);(Doc. 246), stated:

"Plaintiff shall be prohibited from contacting any of the Defendants, including their supervisory employees and/or the individual Defendants, regarding any matter related to this case." (DE #201).

"Plaintiff shall correspond only with Defendants' counsel including any requests for public records." (DE #246).

"Plaintiff shall be prohibited from contacting any of the Defendants, including their supervisory employees and/or the individual Defendants, regarding any matter related to this case" Case No. 99-14027-CIV-Graham, (DE #246).

Defendants Graham and Lynch's sole factual basis for claiming absolute immunity is the mere assertion that:

What is certain is that the judges' actions with respect to Plaintiff all occurred within the context of the civil case which was properly pending before the court.

Defendants Graham and Lynch offer no other facts to support their claim of absolute immunity. The Defendants have utterly failed in their legal duty to explain, nor have they even attempted to explain, why they should be afforded absolute immunity. The mere fact a decision was made "***within the context of the civil case which was properly pending before the court***" does not entitle the Judge to absolute immunity. See Barrett v. Harrington, 130 F.3d 246 (6th Cir. 1997)(rejecting absolute immunity for comments made to the press about a pending case properly before the court.); Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981)(communications to the press and to city officials not afforded absolute immunity even though Judge had criminal proceeding pending). Essentially Graham and Lynch have stated that they have absolute immunity merely because they said so, and Plaintiff or nobody else need question their unsupported legal conclusions. Respected jurists, who are not delusional, have stated that this type of response is simply not good enough. "But the conduct of a judge surely does not become a judicial act merely on his own say-so. A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity." (quoting Justice Stewart, dissenting) Stump v. Sparkman, 435 U.S. 349, 367 (1978). "The proponent of a claim to absolute immunity bears the burden of establishing the justification for such immunity." Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 432 (1993).⁵

Some rights are so clearly established that case law is not necessary. The Eleventh Circuit has expressly stated:

Case law is not always necessary to clearly establish a right. A right may be so clear from the text of the Constitution or federal statute that no prior decision is necessary to give clear notice of it to an official. Also, a general constitutional rule set out in preexisting case law may apply with obvious clarity to the specific circumstances facing the official. The official's conduct may be so egregious that an objective and reasonable official must have known it was unconstitutional even without any fact-specific caselaw on point.

⁵ See also Gray v. Poole, 275 F.3d 1113 (D.C. Cir. 2002)(quoting Burns v. Reed, 500 U.S. 478, 486 (1991)); ("[T]he official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question."). "[T]he official seeking the immunity bears the burden of showing that such immunity is justified for the function in question." Barrett v. Harrington, 130 F.3d 246 (6th Cir. 1997)(quoting Buckley v. Fitzsimmons, 509 U.S. 259, 269, 113 S.Ct. 2606, 2613 (1993)).; Richardson v. Koshiba, 693 F.2d 911 (9th Cir. 1982)

Rowe v. Fort Lauderdale, 2002 U.S. App. 885, *19 n. 10, 15 Fla. Weekly Fed at C241 n. 10 (11th Cir. 2002).

GENERAL PRINCIPLES OF ABSOLUTE IMMUNITY

“As a class, judges have long enjoyed a comparatively sweeping form of immunity, though one not perfectly well defined.” Forrester v. White, 484 U.S. 219, 226 (1988). “A long line of this Court's precedents acknowledges that, generally, a judge is immune from a suit for money damages.” Mireles v. Waco, 502 U.S. 9, 10 (1991). “[I]mmunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” *Id.* at Pg. 12.

A. **The judges' acts were not judicial in nature.**

“The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.” Stump v. Sparkman, 435 U.S. 349,363 (1978). “It is the nature of the function performed - adjudication - rather than the identity of the actor who performed it - a judge - that determines whether absolute immunity attaches to the act.” Forrester v. White, 484 U.S. 219, 220 (1988). “An act is non-judicial if it is one not normally performed by a judicial officer or if the parties did not deal with the judge in his official capacity.” King v. Love, 766 F.2d 962 (6th Cir. 1985). See also Mireles v. Waco, 502 U.S. 9, 12 (1991); Emory v. Peeler, 756 F.2d 1547, 1553 (11th Cir. 1985); Slavin v. Curry, 574 F.2d 1256, 1263 (5th Cir. 1978). The mere fact that a judge commits an act does not make the act judicial in nature. In King v. Thornburg, 762 F. Supp. 336, 341-2 (S.D.Ga. 1991)(citing Harris v. Deveaux, 780 F.2d 911 (11th Cir. 1986), the Court, following the dictates of the Eleventh Circuit Court of Appeals, focused on the following four factors in determining whether a judge's conduct constituted a judicial act:

- (1) the precise act complained of . . . is a normal judicial function;
- (2) the events involved occurred in the judge's chambers;
- (3) the controversy centered around a case then pending before the judge; and
- (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity.

Applying these factors to the instant case yields that the trial court violated three of the four prongs. Specifically, it is not a judicial function for a United States District Court to direct that the Plaintiff, a non-lawyer, must notify a private for profit attorney in order to request Public Records under **Florida Law**. Defendants have not cited any case in the entire history of the United States where any other federal judge felt that he or she has this power. As to the second prong, the events that led to the issue of the orders in question did not occur in the Judge's chambers, or in any courtroom. Presumably, the orders in question were issued in the Judge's chambers, but the alleged conduct occurred out of the presence of the Court and at least 80 miles away from the Fort Pierce Division, S.D.Fla. The controversy did not arise directly and immediately out of a visit to the judge in his official capacity. The controversy arose out of an alleged visit to the Plaintiff's own government in his hometown of Sebring, Florida, which is at least 80 miles away from Fort Pierce.

The orders in question were not "judicial in nature" because there was absolutely nothing to adjudicate because Mason has a First Amendment right to communicate with his government without seeking the permission of private for profit attorneys. The orders of June 19, 2000 and July 25, 2000, (Doc. 201), (Doc. 246), are void because they are unconstitutional. The Southern District of Florida has explicitly adopted the Rules Regulating The Florida Bar. See *Rule 1, Standards For Professional Conduct*⁶ ("Acts and omissions **by an attorney** (emphasis added) admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for discipline..."). See also *Rule 3, Retention Of Membership In*

⁶ See Addendum

*The Bar Of This Court*⁷. The pertinent comments to Rule 4-4.2, R. Regulating Fla. Bar specifically states the following:

Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party to a controversy with a government agency with a government officials about the matter. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

“[T]he particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.” Marbury v. Madison, 1 Cranch 137 (1803). “The limits placed by the First Amendment on the Government extend to its judicial as well as legislative branch.” Equal Emp. Opp. Comm. v. The Catholic Univ., 83 F.3d 455 (D.C. Cir. 1996)(citing Kreshik v. Saint Nicholas Cathedral of the Russian Orthodox Church of North America, 363 U.S. 190, 191 (1960)). Mason has a plenary right to petition the government about any subject he so desires and is never required to seek the permission of private for profit attorneys that live 90 miles away in order to speak to his government. “It is fundamental that the First Amendment ‘was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” Legal Services Corporation v. Velazquez, 531 U.S. 533, 548 (2001). Mason did not lose his right to communicate with the government directly when he filed his lawsuit. The district court punished the Plaintiff for exercising his right of “free speech” by dismissing a meritorious lawsuit. 99-14027, (Doc. 766)(Doc. 791). Mason has a clear right to communicate with his government about the matters in this controversy, litigation notwithstanding. “[T]here is nothing that prohibits one party to a litigation from making direct contact with another party to the same litigation. These rules are designed to regulate the conduct of nonlawyers, and simply do not apply to the conduct of nonlawyers.” E.E.O.C. v. McDonnell Douglas Corp., 948 F.Supp. 54, 55 (E.D.Mo. 1996). The communication between the government and an individual is not generally subject to judicial oversight. Mason had no

⁷ See Addendum

reasonable expectation that a federal judge would attempt to administer the Florida Public Records Act. See Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) (“ Such acts were not judicial because they were not functions normally performed by a judge, and were not “to the expectations of the parties””); Barrett v. Harrington, 130 F.3d 246 (6th Cir. 1997); Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981). Every jurisdiction in the United States has affirmed a citizen’s right to petition the government even in the midst of bitter litigation. See American Canoe Ass’n Inc. v. City of St. Albans, 18 F.Supp. 2d 620 (S.D.W.Va. 1998); Camden v. State Of Md., 910 F. Supp. 1115, 1118 n.8 (D. Md. 1996); Frey v. Dept. of Health & Human Services, 106 F.R.D. 32, 37 (E.D.N.Y. 1985). Holdren v. General Motors Corp., 13 F. Supp. 2d 1192 (D.Kan. 1998); In Re Discipline Of Schaefer, 117 Nev. Adv. Op. No. 44, 36173 (Nev. 2001); In Re Hurley, Case No. No. 97-6058 SI, (8th Cir. 1997); Jones v. Scientific Colors, Inc., Case Nos. 99 C 1959/00 C 171 (N.D.Ill. 2001); Loatman v. Summit Bank, 174 F.R.D. 592 (D.N.J. 1997); Miano v. AC & R Advertising, Inc, 148 F.R.D. 68, 75 (S.D.N.Y.1993); Pinsky v. Statewide Grievance Committee, 578 A.2d 1075,1079 (Conn. 1990); Restatement of the Law (Third) The Law Governing Lawyers, §99. Cmt. K., pg. 76. Reynoso v. Greynolds Park Manor, Inc, 659 So.2d 1156, 1160 (Fla.App. 3 Dist. 1995). State v. Miller, 600 N.W.2d 457; 1999 Minn. LEXIS 592 (Minnesota Supreme Court 1999); Stone v. City Of Kiowa, 263 Kan. 502; 950 P.2d 1305; 1997 Kan. LEXIS 177, *34 (Kansas Supreme Ct. 1997); Terra Intern. v. Miss. Chemical Corp., 913 F. Supp. 1306 (N.D.Iowa 1996) Tucker v. Norfolk & Western Ry. Co., 849 F.Supp.1096, 1097-1098 (E.D.Pa.1994); U.S. v. Heinz, 983 F.2d 609 (5th Cir. 1993); U.S. v. Heinz, 983 F.2d 609, 613 (5th Cir. 1993); U.S. v. Ward, 895 F.Supp. 1000, (N.D. Ill. 1995); Vega v. Bloomsburgh, 427 F. Supp. 593, 595 (D. Mass. 1977). There has been no other competent court of jurisdiction in the entire history of the United States to direct a non-lawyer to seek the permission of a private for profit lawfirm in order to communicate with his government.

Previously, the Appellees have inferred that a federal judge has the “inherent power” to regulate Mason’s out of court and private communications with his government, however this

assertion is sadly mistaken and counter to the Supreme Court's opinions. (*Doc.3 , pg. 9*)⁸; *Defendants Koji and Sorolis Response To Plaintiff's Motion for Summary Judgment, pg. 9*;(Doc. 3, pg. 3). "It is true that the exercise of the inherent power of lower federal courts can be limited by statute and rule, for "[t]hese courts were created by act of Congress." Chambers v. NASCO at 501 U.S. 47. "What the First Amendment precludes the government from commanding directly, it also precludes the government from accomplishing indirectly." Rutan v. Republican Party Of Illinois, 497 U.S. 62, 77-78 (1990). "The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil." Mine Workers v. Illinois Bar Assn., 389 U.S. 217 (1967). "The right to petition government for redress of grievances — in both judicial and administrative forums — is 'among the most precious of the liberties safeguarded by the Bill of Rights.' Because of its central importance, this right is 'substantive rather than procedural and therefore cannot be obstructed, regardless of the procedural means applied.'" Graham v. Henderson, 89 F.3d 75 (2nd Cir. 1996) (quoting United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967)).

The Defendant judges' acts were of an administrative, legislative, and prosecutorial nature. "When a court official acts in a capacity in which he is not called upon to exercise judicial or quasi-judicial discretion, he is not entitled to absolute judicial immunity." Richardson v. Koshiba, 693 F.2d 911 (9th Cir. 1982). "[J]udges do not receive immunity when acting in administrative, legislative, or executive roles." Barrett v. Harrington, 130 F.3d 246 (6th Cir. 1997)(citing Forrester v. White at 484

⁸ Appellees cite several cases in support of this "inherent authority" theory. ie. Phipps v. Blakeney, 8 F.3d 788 (11th Cir. 1993); Banco Latino, S.A.C.A. v. Gomez Lopez, 53 F. Supp. 2d 1273, 1277 (S.D. Fla. 1999); Telectron, Inc. v. Overhead Door Corn., 116 F.R.D. 107, 126 (S.D. Fla. 1987); Day v. Allstate Insurance Co., 788 F.2d 1110 (5th Cir. 1986); M&M Medical Supplies & Serv., Inc. v. Pleasant Valley Hosp., Inc., 981 F.2d 160, 163 (4th Cir. 1992). These cases are not dispositive for several reasons. Firstly, these cases deal with private actors, not the government. Secondly, these cases do not address litigant's right under Florida Law for public records. Thirdly, these cases don't address First Amendment

U.S. at 229-30, 108 S.Ct. at 545-46). To say that: (1) “Plaintiff shall be prohibited from contacting any of the Defendants, including their supervisory employees and/or the individual Defendants, regarding any matter related to this case.” *Case No. 99-14027-CIV-Graham, (DE #201)*,” and (2) Plaintiff shall correspond only with Defendants’ counsel including any requests for public records; and *Case No. 99-14027-CIV-Graham, (DE #246)*; is a clear example of rule-making and/or administration. “[J]udicial immunity has not been extended to judges acting to promulgate a code of conduct for attorneys.” *Forrester v. White* at 484 U.S. 229. Florida Courts have made it abundantly clear that the rule-making and policy with respect to Florida Public Records is function of the legislature, not the judiciary. See *Tober v. Sanchez*, 417 So 2d 1053, 1055 (App. Dist. 3 1982). It couldn’t be any clearer that Graham and Lynch were attempting to impose ABA Model Rule 4.2⁹ and its equivalents upon Mason. The U.S. Supreme Court in *Supreme Court Of VA. v. Consumers Union*, 446 U.S. 719, 731 (1980) held that “propounding the Code [State Bar] was not an act of adjudication but one of rulemaking.” However, unlike the Judges in *Consumers Union*, federal judges in the state of Florida have no statutory authority or constitutional authority to promulgate state bar rules for non-lawyers or lawyers either, therefore Defendants Lynch and Graham are not entitled to legislative immunity. See *Rule 3, Retention Of Membership In The Bar Of This Court* (noting that the Rules Regulating the Florida Bar are promulgated by the Supreme Court of Florida). There is no code of conduct for non-lawyers, therefore Lynch and Graham created one. This is a legislative act. After Lynch and Graham created their code of conduct for laymen, they then decided to bring charges for violations of their code. (99-14027, Docs. 766, 791). This is an act of law enforcement. See *Lopez v. Vanderwater*, 620 F.2d 1229 (7th Cir. 1980)(holding that a judge “is not immune from liability for his prosecutorial acts.”). See also *Smith v. Shook*, 237 F.3d 1322, 1324 (11th Cir. 2001)(holding that a citizen lacks standing to sue because a prosecutor does not exercise its discretion to bring an action). Along this vein, the Court in *Sevier v. Turner*, 742 F.2d 262 (6th Cir. 1984) ruled that the Defendant Judge did not have absolute immunity because the Judge

rights of non-lawyers.

⁹ See Addendum

“undertook prosecutorial duties that constituted nonjudicial acts” by initiating criminal prosecutions against fathers who were in arrears on their child support payments. Similarly, in the instant case, the Magistrate initiated a civil contempt charge against Mason because Mason allegedly violated the Court’s administration plan of the Florida Public Records Act by submitting his public records request to his government directly, and not to their private for profit attorneys. The administration of the Florida Public Records Act as called for by the orders, (Doc. 201)(Doc. 246), in the instant case, is not normally performed by a federal judge in the exercise of his duties. See Henderson v. State, 745 So.2d 319 (Fla. 1999) “[W]e do not equate the acquisition of public documents under chapter 119 with the rights of discovery afforded a litigant by judicially-created rules of procedure...” See also Scotto v. Almenas, 143 F.3d 105, 111 (2nd Cir. 1998)(“ [t]he more distant a function is from the judicial process, the less likely absolute immunity will attach.”). See also Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979)(holding that the Judge’s act in public criticizing a defendant before his court was not judicial in nature in that the acts of the Judge were not to the expectations of the parties). Similarly, in Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981)¹⁰, the Court held that the Judge did not have absolute immunity notwithstanding the fact Judge’s act in holding the Plaintiff in contempt were judicial in nature because the Plaintiff had no reason to believe to that the Judge could hold him in contempt for domestic problems. In the instant case, Mason had no reasonable expectation that he could be held in civil contempt by a federal judge for exercising his constitutional and statutory rights under Florida law to ask his government for public records. If the orders, (99-14027, (Doc. 201, 246)), in question were violative of some statute, or if Mason had behaved in some illegal manner in communicating with his government, then the Defendants proper remedy would have been to seek the assistance of some prosecutor. The Court in Gregory v. Thompson, 500 F.2d 59, 65 (9th Cir. 1974), held that a judge was not entitled to absolute immunity because the judge acted like a police officer.

B. The Judges in this matter acted in complete and total absence of all jurisdiction.

¹⁰ See Bonner, *supra*.

"Law 101" or "Judge 101" requires that a Judge, federal, state, or otherwise decide the matter of jurisdiction first. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, (internal citations omitted), which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." Kokkonen v. Guardian Life Ins 511 U.S.375(1994). "[B]efore rendering a decision . . . every federal court operates under an independent obligation to ensure it is presented with the kind of concrete controversy upon which its constitutional grant of authority is based; and this obligation on the court to examine its own jurisdiction continues at each stage of the proceedings, even if no party raises the jurisdictional issue and both parties are prepared to concede it." Bischoff v. Osceola County Florida, 222 F.3d 874, 878 (11th Cir.2000). "It is not proper for federal courts to proceed to a merits question despite jurisdictional objections." In re Madison Guaranty Savings & Loan Association, 173 F.3d 866; 335 U.S. App. D.C. 327 (C.A.D.C. 1999). In Case No. 99-14027-CIV, Mason repeatedly and incessantly challenged the jurisdiction of the court, however, the Court absolutely refused to state where it got the legal authority to issue the orders in question. See for example, and note that this list is not collectively exhausted, Case No. 99-14027 **see Plaintiff's motions and responses**, (Doc. #200);(Doc. #239); (Doc. #262);(Doc. #264);(Doc. #284);(Doc. #334);(Doc. #509);(Doc. #515);(Doc. #526);(Doc. 554);(Doc. 632, pg. 5);(Doc.#633);(Doc. 652);(Doc. 663); (Doc. 735); (Doc. 736); (Doc. 738); (Doc. 783); (Doc. 787, pgs 2-3); (Doc. 810); (Doc. 812); (Doc. 813); (Doc. 817); (Doc. 829), (Doc. 845);**and the court's orders**: (Doc. 201);(Doc. 246);(Doc. #279);(Doc. 281);(Doc. #407);(Doc. #514);(Doc. #524);(Doc. #528);(Doc. #634);(Doc. 673);(Doc. 744);(Doc. 745);(Doc. 766);(Doc. 791);(Doc. 868);(Doc. 874);(Doc. 882, pgs. 1-2), **and relevant Defendants' responses and motions**, (Doc. 199); (Doc. 199);(Doc. 231);(Doc. 274);(Doc. 275); (Doc. 348);(Doc. 511);(Doc. 559);(Doc. 639);(Doc. 646);(Doc.690); (Doc. 823);(Doc. 834); (Doc. 838);(Doc. 841); (Doc. 859). Additionally, in the instant case, Defendants Graham and Lynch and the Court itself have refused to address the legality of the orders in question. See (Doc. 52);(Doc. 56);

“A judge acts in the clear absence of all jurisdiction if the matter upon which he acts is clearly outside the subject matter jurisdiction of the court over which he presides.” King v. Love, 766 F.2d 962 (6th Cir. 1985) [A] judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” Mireles v. Waco at 502 U.S. 12. “When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost.” King v. Thornburg, 762 F. Supp. 336, 341 (S.D.Ga. 1991)(citing Rankin v. Howard, 633 F.2d 844, 849 (9th Cir. 1980)). “Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible.” Tucker v. Outwater, 118 F.3d 930 (2nd Cir. 1997)(quoting Bradley). Had the defendants in this matter done a minimal amount of research or had they verified the law as quoted to them by the plaintiff, the defendants would have known that a federal judge simply does not have the legal authority to tell the plaintiff that he must contact a private attorney before communicating with his government. Intuitively, given American values, such a notion is inane on its face and anathema to everything America stands for.

“Plaintiff shall correspond only with Defendants’ counsel including any requests for public records “ (DE #246). Congress did not grant the federal judiciary with jurisdiction over the administration of the Florida Public Records Act, or Chapter 119, Florida Statutes. “Courts created by statute only have such jurisdiction as the statute confers.” Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 820 (1988). Public records, under Florida law, are not any of the federal government’s business. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. “ *Amendment X, United States Constitution*. As a result of the Tenth Amendment, Congress could not grant the federal government jurisdiction over Florida Public Records even if wanted to. The Federal Rules of Civil Procedure do not create federal jurisdiction. In re Infant Formula Antitrust Litigation, MDL 878 v. Abbott Laboratories, 72 F. 3d 842, 843 (11th Cir. 1995). The fact that litigants have a case before the district court is not a license for the district judge to interject into every matter

involving the litigants. Graham and Lynch had absolutely no reason to believe that they could stick their noses' in Marcellus M. Mason, Jr.'s private business with respect to his alleged communications with his government regarding public records.

The Court acted in complete violation of all jurisdiction because the Defendants, Sorolis, Koji, and Highlands County, lacked standing to ask the Court, Graham and Lynch, to grant them the requested injunctions. The Defendants suffered no injury as a result of Mason's alleged requesting of public records under Florida law without asking for the permission of private for profit attorneys. See Bischoff v. Osceola County Florida, 222 F.3d 874, 884 (11th Cir.2000) ("plaintiffs must establish that they have suffered some injury in fact as a result of the defendant's actions"). See also Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). It is absurd to even argue that a public entity can be damaged by merely complying with the requirements of state law that it receive and process public record requests. "[I]f a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action;" Dykes v. Hosemann, 776 F.2d 942, 947 n. 17 (11th Cir. 1985)(quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 352, 20 L.Ed. 646 (1872)). See also Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981); Tucker v. Outwater, 118 F.3d 930 (2nd Cir. 1997)(quoting Bradley). Dykes, which quotes Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 352, and its example of the probate judge exceeding his jurisdiction by trying a criminal case is dispositive and indistinguishable from the instant case. In the instant case, the Graham/Lynch duo was given absolutely no authority to administer public records under Florida Law. Dykes, makes abundantly clear that the Graham/Lynch duo clearly acted in violation of subject matter jurisdiction.

"[T]he third element in the concept of jurisdiction as used in the context of judicial immunity necessitates an inquiry into whether the defendant's action is authorized by any set of conditions or circumstances." Wade v. Bethesda Hospital, 337 F. Supp. 671, 673 (S.D. OH 1971). See also Gregory v. Thompson, 500 F.2d 59 n. 2 (9th Cir. 1974). Using this criterion, the Court in Wade concluded that the defendant Judge did not have absolute immunity because the Judge could not order the sterilization of an individual under any set of circumstances. Similarly, in the instant case, a federal judge can not

order Mason to submit his Florida public records request to private attorney under any set of circumstances. In a case that is roughly analogous to the instant case, Maestri v. Jutkofsky, 860 F.2d 50 (2nd Cir. 1988), the Court held that the judge did not have absolute immunity because the judge acted in clear violation of all subject matter jurisdiction by causing an arrest of a citizen in a neighboring jurisdiction.

The best evidence that the Graham/Lynch duo acted in clear violation of all subject matter jurisdiction is the behavior of the Defendants themselves in this case. Defendants Graham, Lynch, Sorolis, and Koji have refused to answer interrogatories with respect to subject matter jurisdiction. See (DE #9), (DE #10), and *Plaintiff's Motion To Compel Defendants Graham, Lynch, And Sorolis' Answer To Plaintiff's First Interrogatory For Graham, Sorolis, And Lynch And Plaintiff's Motion For Sanctions*, dated March 7, 2002.

1) **The Tenth Amendment precluded the judges in this matter from having jurisdiction over Mason's communications with respect to Public Records requests under Florida law.**

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Amendment X, United States Constitution*. Florida's right to regulate its own public records predates the adoption of the Constitution and as a result of this fact the Tenth Amendment precludes the federal government or federal judges from administering Florida public records. See Cook v. Gralike, 531 U.S. 510, 519 (2001)(holding that pre-existing powers "proceed, not from the people of America, but from the people of the several States; and remain, after the adoption of the constitution, what they were before..."). "The validity and conclusiveness of a Florida decree must be tested by Florida law; it can be given no greater force in a federal court than it ought to have in the courts of the state by whose authority it was rendered." Parker Bros. v. Fagan, 68 F.2d 616, 617 (5th Cir. 1934)¹¹. Congress "has enacted that the state law shall be the rule of decision in the federal courts." Sibbach

v. Wilson & Co., 312 U.S. 1, 10 (1941). The state of Florida does not require Mason to seek the permission or consent of a private for profit attorney prior to making public records request; in fact, if Highlands County had failed to produce public records even if Mason failed to gain the permission of their private for profit attorneys, Mason could have filed both civil charges and a criminal complaint pursuant to chapter 119 Florida Statutes no matter what a federal judge says. Defendants' Graham and Lynch's orders create an absurd anomaly in this respect. This absurd proposition is only made possible by the illegal interference and acts of usurpation by Graham and Lynch.

Assuming the Magistrate had jurisdiction to direct that the "Plaintiff shall correspond only with Defendants' counsel including any requests for public records, the orders would still be improper because Florida Courts don't feel they have the right to take such liberties. *"We would be less than candid if we did not acknowledge that, as the present case demonstrates public agencies are placed at a disadvantage, compared to private person's, when faced with potential litigation claims. It is also pertinent to observe that the wisdom of such a policy resides exclusively within the province of the legislature."* Tober v. Sanchez, 417 So 2d 1053, 1055 (App. Dist. 3 1982). **"[W]e do not equate the acquisition of public documents under chapter 119 with the rights of discovery afforded a litigant by judicially-created rules of procedure"** Henderson vs. State Of Florida, 745 So. 2d 319, 325-6; (Fla. 1999). "Courts cannot judicially create any exceptions, or exclusions to Florida's Public Records Act." Board of County Commissioners of Palm Beach County v. D.B., 784 So. 2d 585, 591 (Fla. 4th DCA 2001). See also Wait v. Florida Power and Light Company, 372 So. 2d 420, 425 (Fla. 1979) ("We find no authority to support the argument that Florida Power & Light, by engaging in litigation before a federal forum, has somehow given up its independent statutory rights to review public records under chapter 119. The fact that Florida Power & Light simultaneously engaged in litigation before a federal agency does not in any way prevent its use of chapter 119 to gain access to public documents."). The Federal Rules of Civil Procedure did not give Graham and Lynch the right to interfere with Mason's right to public records under Florida Law. "[T]he State of Florida has the right to extend to its citizenry greater protections than those afforded by the federal constitution."

¹¹ See Bonner, *supra*.

Adams v. State, 448 So.2d 1201, 1203 n.1 (Fla.App. 3 Dist. 1984)(citing Sambrine v. State, 386 So.2d 546, 548 (Fla. 1980)). “Within our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution. If so, the broader state protections would define the actual substantive rights possessed by a person living within that State.” Mills v. Rogers, 457 U.S. 291, 300 (1982). Under the Florida Constitution, and pursuant to Section 119.01, Fla.Stat., plaintiff has absolute right to request public records from his state government without seeking the permission of private for profit attorneys. See § 119.01, et.seq., Fla.Stat¹², Article 1, Section 24, Fla. Const¹³. “Government remains the servant of the people, even when citizens are litigating against it.” American Canoe Ass’n Inc. v. City of St. Albans, 18 F.Supp. 2d 620, 621 (S.D.W.V.1998). See also Camden v. State of MD. 910 F.Supp 1115 (D.Md. 1996). “In giving federal courts ‘cognizance’ of equity suits in cases of diversity jurisdiction, Congress never gave, nor did the federal courts ever claim, the power to deny substantive rights created by State law or to create substantive rights denied by State law.” Ortiz v. Fibreboard Corp., 527 U.S. 815, 845 (1999)(quoting Guaranty Trust Co. v. York, 326 U.S. 99, 105 (1945)). See also 28 U.S.C. § 2072¹⁴ (“Such rules shall not abridge, enlarge or modify any substantive right”); Semtek International Inc. v. Lockheed Martin Corp., 531 U.S. 497, 503 (2001). “[C]ourts “are not at liberty to create an exception where Congress has declined to do so.” Freytag v. Commissioner, 501 U.S. 868, 874 (1991). “It is not the place of the judiciary to disregard the guidelines set by Congress.” Traficanti v. U.S., 227 F.3d 170, 175 (4th Cir. 2000). See also Kahn v. Shevin, 416 U.S. 351, 356 (1974)(“courts do not substitute their social and economic beliefs for the judgment of legislative bodies, [which] are elected to pass laws.”).

C. Judges are not immune from prayers for declaratory and injunctive relief.

¹² See Addendum

¹³ See Addendum

¹⁴ See Addendum

Even though a judge maybe immune from an action for money damages, the judge would not be immune from an action for equitable relief.” Slavin v. Curry, 574 F.2d 1256, 1264 (5th Cir. 1978). See also Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986) (“Immunity does not extend, however, to actions for prospective injunctive relief.”). Mason specifically requested injunctive and declaratory relief. See *Complaint*, pgs. 16, 17, ¶¶150, 156, 163.

D. Defendants claim of absolute immunity perverts the doctrine and evinces absurdity.

“[A] general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself.” Stump v. Sparkman, 435 U.S. 349, 355 (1978). If absolute immunity is applied to this case, then there is nothing that would stop a federal judge from issuing directives that litigants “before it” must drive at a speed that is ten miles per hour slower than the posted speed on the highways and roads or be punished by the federal court. Along this same vein and following this same contorted logic, a federal judge would be granted immunity for rendering an order stating that “Plaintiff shall not fish in a state park on a Saturday.” Why quit here, why not allow a federal judge immunity for rendering orders stating that litigants before shall not spank their kids on Sunday? If absolute immunity is applied in the instant case, the door would be open to allow a federal judge to do anything he likes or promulgate any “legislation” even if such actions circumvent the will of the Congress, the Constitution of the United States, Florida Statutes, and the Florida Constitution.

8. Mason should have been awarded a summary judgment in this matter.

Summary judgments are reviewed de novo. Burger King Corporation v. Weaver, 169 F.3d 1310, 1314 (11th Cir.1999). “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56, Fed.R.Civ.P.. See also Burger King Corporation v. Weaver

at 169 F.3d 1315. “The papers opposing a motion for summary judgment shall include a memorandum of law, necessary affidavits, and a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. . . . All material facts set forth in the statement required to be served by the moving party will be deemed admitted unless controverted by the opposing party’s statement.” S.D.Fla. Local Rule 7.5. “Each party opposing a motion shall serve an opposing memorandum of law not later than ten days after service of the motion as computed in the Federal Rules of Civil Procedure. Failure to do so may be deemed sufficient cause for granting the motion by default.” S.D.Fla. Local Rule 7.1.C.

Mason should have been awarded summary judgment with respect to Counts 13-15 by default and on the merits. Mason filed a partial motion for summary judgment on or about March 25, 2002 that Defendants Graham and Lynch never responded to. As a matter of fact, Mason filed a motion begging the court to direct that Defendants Graham and Lynch respond to Mason’s summary judgment motion. See *Plaintiff’s Motion To Direct Defendants Graham And Lynch To File A Response To Plaintiff’s Partial Motion For Summary Judgment*. The District Court adamantly refused to make Defendants Graham and Lynch respond to Mason’s summary judgment. (Doc. 52); (Doc. 56).

The essential facts of this case are not in dispute, nor could they be, because the record fully supports the essential facts upon which this lawsuit was brought. See Undisputed Above. The only questions to be resolved are legal ones. Do Defendants Graham and Lynch have absolute immunity? No! Can Defendants Koji and Sorolis be sued for violations of Sections 1983, 1985, and 1986. Yes! The answer to these questions are fully answered and argued in this brief.

9. The Southern District of Florida has compromised the integrity of the Federal Judiciary.

The mere fact that a man or a woman dons a robe and makes a “legal decision” does not make that decision legitimate. “Courts promote the rule of law by earning the respect of the people as the fair and dispassionate arbiters of society’s disputes, both large and small. A court system

cannot operate effectively without the respect of the people.” United States v. Gunby, 112 F.3d 1493 (11th Circuit, 1997). "If the people do not respect the judiciary, the people will disobey its edicts and flout its commands. The people will result to self-help." Gunby at 1502. "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. . . Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law." Canon 1 Commentary, *Code Of Conduct For United States Judges*. "Section 455(a) of Title 28 of the United States Code requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Liteky v. United States, 510 U.S. 540, 541 (1994). Additionally, Liteky the Court also stated:

It is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that "extrajudicial source" is the only basis for establishing disqualifying bias or prejudice. It is the only common basis, but not the exclusive one, since it is not the exclusive reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment

The Supreme Court has defined the term "extra-judicial" to mean any opinion formed on the basis of knowledge that the subject ought not to possess or "evidence" not properly admitted to the Court. See Liteky v. United States, 510 U.S. 540, 550 (1994).

A reasonable person would have serious doubts about the integrity of the Court given the following undeniable facts:

- This case was tried by Judge Moore, a colleague, co-worker, and possible personal friend of Defendants Graham and Lynch.
- The district court has refused to publish this case or to state why it won't publish the case even though Mason has filed two motions requesting that this case be published. See *Objections To R&R, Plaintiff's Motion For Publication* ; (Doc. 52);

(Doc. 56). As a result of this failure, a reasonable person could easily conclude that the district court is attempting to avoid scrutiny of its actions by concealing the facts of this case.

- Defendants Graham and Lynch removed this case to the S.D. Fla. even though case included Highlands County, notwithstanding the fact Defendant Graham had an issued an injunction stating that Mason should not file anymore lawsuits in the S.D.Fla. where Highlands County was a party. See Case No. 99-14027, (Doc. 878).
- The Judges in this matter allowed Defendants Graham and Lynch's preference to have this matter tried in S.D. Fla. before colleagues, co-workers, and possible personal friends prevail over the clear right of the Plaintiff to have this matter tried in the M.D. Fla. where the Plaintiff chose to have this matter tried. Moreover, Judge Moore allowed Defendants Graham and Lynch's preference to overrule Plaintiff's clear right to have his case tried in the most convenient forum.
- The Judges in this matter made the extra-judicial opinion that Mason has previously filed "vexatious lawsuits," when they have absolutely no admissible evidence to prove this conclusion.
- The Judges in this matter gave the Defendants a "de facto" summary judgment with respect to Counts 1-12 without making any finding of fact, or giving the Plaintiff notice of the summary judgment.
- The Judges in this matter simply ignored and failed to rule on every single motion that Mason submitted. See *Procedure*, above.
- Judge Middlebrooks has referred to the Plaintiff as "delusional" when he knows absolutely nothing about the Plaintiff. See *Exhibit 1, Plaintiff's Motion For Change of Venue Or Plaintiff's Motion To Transfer*.
- Judge Zloch, without addressing the many serious allegations has raised against Donald L. Graham, has concluded that Judge Graham acted properly without even pretending to examine the facts or the established record. See *Exhibit 1, Plaintiff's*

Motion For Change of Venue Or Plaintiff's Motion To Transfer. This conclusion was extra-judicial.

In addition to the foregoing, the district court and the R&R used the following slick techniques:

- The R&R completely ignores the issues set forth in the Plaintiff's filings. The district court fails to mention any of the legal positions Mason has taken in his responses to the Defendants' motions to dismiss or Mason's position set forth in his summary judgment motion. For more discussion, see *Objections To R&R*, pg. 10.
- The R&R does not fairly characterize Plaintiff's Complaint, nor does the R&R accurately reflect the facts that the record fully supports. This is the most dishonest and egregious act of all. The district court intentionally perused the Plaintiff's complaint looking for superficial allegations that it knew for a fact would not support a claim under section 1983. Instead of choosing those pertinent allegations set forth in the *Complaint, ¶¶90,109,130 Page 10, 12, 14*, the district chose its own allegations to support its preconceived notions. For more discussion, see *Objections To R&R*, pgs. 10-13.
- The district court has acted as an advocate for Defendants Graham and Lynch and has refused to make Graham and Lynch state how the orders, (Doc. 201)(Doc. 246), are legal. Defendants Graham and Lynch have never told anybody why these orders are legal. What arrogance! For more discussion, see *Objections To R&R*, pgs. 13-14.
- The district court has allowed Defendants Graham and Lynch to openly defy the rules of court with impunity. Defendants Graham and Lynch have absolutely refused to respond to several motions and filings that were submitted by the Plaintiff to the Court. For more discussion, see *Objections To R&R*, pgs. 14-15.
- The R&R evades the discussion of the legality of the Court orders of June 19, 2000, (DE #201), July 25, 2000, (DE #246), which forms the basis of Plaintiff's Complaint. Nowhere in the entirety of the R&R does the Court state why it thinks the orders of June 19, 2000, (DE #201), July 25, 2000, (DE #246), are legal. For more discussion, see *Objections To R&R*, pgs. 15-16.

- The R&R does not discuss pertinent legal issues raised by the pleading and the submissions to the Court. The First Amendment, Tenth Amendment, § 119.01, Fla.Stat., and Article I, Section 24, Fla.Const, issues are not discussed anywhere by the district court. For more discussion, see *Objections To R&R*, pgs. 16-17.
- The R&R improperly focuses on Plaintiff's supposed motive rather than on the facts or the allegations which supports Plaintiff's claims. The district court engaged in mere rank speculation about the Plaintiff's supposed motive rather than address the pertinent allegations in the complaint. See *Objections To R&R*, pgs. 17-18.
- The district judge chose to mock the Plaintiff rather address the above legitimate concerns. (Doc. 56).

Many of the foregoing acts display a lack of candor, dishonesty, and general unfairness. Based upon the foregoing, Plaintiff requests that Judge Middlebrooks, Judge Zloch, Judge Moore, Magistrate O'Sullivan and the Defendant Judges be permanently barred from hearing any case for which Mason is a party. There is legal precedence for this type of request. See Nichols v. Alley, 71 F.3d 347 (10th Cir. 1995)(court held that no judge in the state of Oklahoma could hear the case).

CONCLUSION

Graham and Lynch's actions show disrespect, disdain, and contempt not only for Mason's, rights, but also show disrespect, disdain, and contempt for the Congress, the American people, and the Constitution of the United States. Graham and Lynch's actions are not only un-American, but anti-American. Graham and Lynch's actions are no different than autocrats like Saddam Hussein, Fidel Castro, Joseph Stalin, Mussolini of Italy, and other infamous dictators. Dictators don't have to explain their actions either. The arrogance and misconduct of Graham and Lynch is threatening to poison and taint the entire federal legal system. As this case proves, colleagues are having to risk their own personal integrity and that of the Court by attempting to spare Graham and Lynch from their illegal acts of usurpation and arrogance. This Court and the Southern District of Florida are reduced to making unpublished decisions. Unpublished decisions do not inspire confidence.

Apparent in the handling of this case, is the apparent attitude of the presiding Judge and the Defendant Judges, that a federal judge can do whatever the hell it feels like doing. This apparent attitude is deeply troubling to Mason, and what should be equally concerning to this Court is the apparent attitude of the Judges of the Southern District of Florida is that they can run afoul of clearly established law and violate pro se litigants rights while expecting this court to affirm their lawless decisions.

WHEREFORE, and based upon the foregoing. Mason requests the following:

1. Mason requests that this entire matter be released for publication.
2. Mason requests summary judgment with respect to Counts 13, 14, and 15 against all defendants, or in the alternative Mason requests leave to amend to assert claims where the facts support such claims.
3. Mason requests that this Court publicly rebuke and reprimand the Judges, to include Defendant Judges as well as the presiding judges, for the handling of this matter.
4. Mason requests that Donald L. Graham, Frank Lynch, Jr., Chief Judge Zloch, and Judge Donald Middlebrooks be permanently barred from presiding over any case for which Mason is a party to. Mason also request that any judge that is a personal friend of the Judges in question be permanently barred from hearing any matter for which Mason is a party.
5. Mason requests that triple costs be taxed against the Defendants.

Respectfully Submitted:
Marcellus M. Mason, Jr.
218 Florida Drive
Sebring, FL 33870
863-385-8501

Dated this 28th day of June, 2002

CERTIFICATE OF COMPLIANCE

I, Marcellus M. Mason Jr., hereby declare that this brief is in compliance with the volume limitation as set forth in 32(a) (7)(B)(i) and it uses it contains no more than 14,000 words. This brief as reported by the word count function of Microsoft Word 2000 contains 13,957 words, excluding the table of contents, table of authorities, and other items not countable towards the 14,000 word limit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail, postage prepaid, first class on June 28, 2002, to: Allen, Norton & Blue, 324 South Hyde Park Avenue, Suite 350, Tampa, Florida, 33606 and to Wilfredo Fernandez, Assistant U.S. Attorney, 99 N.E. 4th Street, Suite 300, Miami, Florida 33132-2111.

ADDENDUM

Local Rule 7.1.C states:

Each party opposing a motion shall serve an opposing memorandum of law not later than ten days after service of the motion as computed in the Federal Rules of Civil Procedure. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within five days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court.

ABA Model Rule 4.2 states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

§ 99, Restatement Third The Law Governing Lawyers in pertinent part states:

No general rule prevents a lawyer's client, either personally or through a nonlawyer agent, from communicating directly with a represented nonclient. Thus, while neither a lawyer nor a lawyer's investigator or other agent (see Comment to here) may contact the represented nonclient, the same bar does not extend to the client of the lawyer or the client's investigator or other agent.

First Amendment, United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article I, Section 24, Florida Constitution

SECTION 24. Access to public records and meetings. (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution. (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. (c) This section shall be self-executing. The legislature, however, may provide by general law for the exemption of records from the requirements of subsection (a) and the

exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject. (d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

Section 119.01, Fla.Stat.:

119.01 General state policy on public records.-- (1)It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person. (2) The Legislature finds that, given advancements in technology, providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, then such access should be provided in the most cost-effective and efficient manner available to the agency providing the information. (3) The Legislature finds that providing access to public records is a duty of each agency and that automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must ensure reasonable access to records electronically maintained. (4) Each agency shall establish a program for the disposal of records that do not have sufficient legal, fiscal, administrative, or archival value in accordance with retention schedules established by the records and information management program of the Division of Library and Information Services of the Department of State.

28 U.S.C. § 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

Rule I, Standards For Professional Conduct

A. Acts and omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship. Attorneys practicing before this Court shall be governed by this Court's Local Rules, by the Rules of Professional Conduct, as amended from time to time, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of

Professional Conduct, except as otherwise provided by specific Rule of this Court. [Attorneys practicing before the Court of Appeals shall be governed by that Court's Local Rules and the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by Rule of the Court].

Rule 3, Retention Of Membership In The Bar Of This Court

To remain an attorney in good standing of the bar of this Court, each member must remain an active attorney in good standing of the Florida Bar, specifically including compliance with all requirements of the Rules Regulating the Florida Bar, as promulgated by the Supreme Court of Florida.