

Related Background Information:

This document is part of a series in which gross misconduct by Judge Donald L. Graham and Magistrate Frank Lynch Jr. is documented at <http://secretlaw.com>, <http://donaldlgraham.blogspot.com>, and <http://geocities.com/mcneilmason>. These websites allege and **document** gross misconduct which would otherwise be incredulous and beyond belief. These websites demonstrate that federal judges will lie to protect themselves and each other and conceal their misconduct through the use of unpublished decisions. Please refer members of the legal community to the websites <http://secretlaw.com>, <http://donaldlgraham.blogspot.com>, and <http://geocities.com/mcneilmason>.

HOW THE COURT RULED

The court's ruling is located at

<http://secretlaw.com/NewComplaint/HelpLetters/11305/11305.pdf>.

In yet another unpublished decision, the Eleventh Circuit ruled the following:


1. I had no right to expect the district judge to rule on a motion for a preliminary injunction even it had been pending for more than two 1 ½ years or from November 24, 1999 until the date of this petition, March 8, 2001.
2. A magistrate can issue an injunction so long as the Magistrate does not call the order an injunction.
3. A federal court can take away your right to communicate with the Government directly, and you can appeal this AFTER the case is dismissed or closed.
4. A federal magistrate judge can overrule rights created under the Florida Public Records Act.

All this may seem incredible, but it is true.

5. United States Court of Appeals for the Eleventh Circuit.

L.T. No. 99-14027-CIV

MARCELLUS M. MASON, JR.,

v.  Plaintiff/Appellant/Petitioner

HIGHLANDS COUNTY BOARD OF COUNTY
COMMISSIONERS,

Defendant/Appellees/Respondent

In re Marcellus M. Mason, Jr. , Petitioner

Petition for Writ of Mandamus

United States District Court
Southern District of Florida
Donald L. Graham, Judge
Frank Lynch, Magistrate Judge

Marcellus M. Mason, Jr.
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CITATIONS

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Case No. 99-14027-CIV

Mason v. Heartland Library Cooperative, et al.

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:

Marcellus M. Mason, Jr. , petitioner

Highlands County Board of County Commissioners, respondent

Heartland Library Cooperative, respondent

Hardee County Board of County Commissioners, respondent

Desoto County Board of County Commissioners, respondent

Okeechobee County Board of County Commissioners, respondent

Maria N. Sorolis, Esq., attorney, respondent

Brian Koji, Esq., attorney, respondent

J. Ross MacBeth

Public Risk Management, insurance provider, respondent

Gallagher-Bassett Services, Inc, insurance adjuster, respondent

Donald L. Graham, United States District Judge, respondent

Frank Lynch, United States Magistrate Judge, respondent

QUESTIONS PRESENTED FOR REVIEW

Is it an abuse of discretion or a dereliction of duty for a federal Magistrate Judge or a District Judge to refuse to rule on a motion for a preliminary injunction or even to give an explanation to the plaintiff why the court refuses to rule on the motion?

Does a federal Magistrate Judge have the legal authority to issue “*a pretrial discovery issue and not an injunction issue per se*” that bars the plaintiff, a non-lawyer, from communicating directly with the government defendants?

Does a federal Magistrate Judge have the legal authority to issue “*a pretrial discovery issue and not an injunction issue per se*” that tells the plaintiff how the plaintiff he may get documents under the Florida Public Records Act?

JURISDICTIONAL STATEMENT

Petitioner brought suit in the United States District Court pursuant to 28 U.S.C. §§ 1331,1343. Petitioner, hereinafter, “Mason”, alleges violations of Title VII of the Civil Rights Act, violations of 42 U.S.C. §§ 1981, 1983,1985, and 1986. Mason’s claims centered around employment discrimination and discrimination in the use of a public facility. Mason’s pendant state laws claims for defamation, conspiracy to defame, intentional emotional distress, Florida Whistle-Blowers Act, and the Florida Civil Rights which were brought pursuant to 28 U.S.C. § 1367. Mason is a resident of Sebring,

Florida and Highlands County. Defendants Highlands County Board of County Commissioners and Heartland Library Cooperative principal place of business is in Sebring, Florida. Defendants, Hardee County Board of County Commissioners and Okeechobee County Board of County Commissioners principal place of business are in Wauchula, Florida and Okeechobee Florida, respectively. Mason was an employee of Heartland Library Cooperative which is a consortium composed of the libraries in Okeechobee, Hardee, and Highlands County. Pursuant to 28 U.S.C. § 1391, venue is proper in the United States District Court, Southern District of Florida because that is where plaintiff's resides and where the majority of the illegal acts occurred. Moreover, all of the defendants in this matter, with the possible exception of Hardee County Board of County Commissioners are located in the Southern District of Florida of the United States District Court ,.

Petitioner seeks to invoke the jurisdiction of this court pursuant 28 U.S.C. § 1291, 28 U.S.C. § 1651(a), and Fed. R. App. P. 21(a) to review rulings on final orders. This petition seeks to reverse the grant of a preliminary injunction or “*a pretrial discovery issue and not an injunction issue per se*” to the defendants in this matter which denies the plaintiff the opportunity to speak directly with the government defendants in this matter. Secondly, this petition seeks to reverse the grant of a preliminary injunction or “*a pretrial discovery issue and not an injunction issue per se*” to the defendants in this matter which requires the plaintiff to make application for Florida Public Records through a non-government private attorney located approximately 90 miles away from where the records are kept. Finally, this petition seeks review of lower court's refusal to

rule on a motion for preliminary injunction. This Court in Citizens. Concerned About Children v. School Bd., 193 F.3d 1285 (11th Cir. 1999) stated, “[w]e acknowledge that an order that does not rule on a request for injunctive relief, but that has the effect of denying it, may be immediately appealable.”

STATEMENT OF CASE

PROCEDURAL BACKGROUND

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

On 11/24/99, Mason filed a Motion for Preliminary Injunctive Relief. (DE #39). On 11/30/99, plaintiff filed an ADDENDUM TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF. (DE #60). On 12/6/99, Mason filed a SECOND ADDENDUM TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF. (DE # 66). On 12/9/99, Mason filed a THIRD ADDENDUM TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF. (DE #80). On 12/16/99, Mason filed a PLAINTIFF'S RESPONSE TO DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF. (DE #88). On 12/22/99, the Court entered its ORDER SETTING HEARING [*Motion hearing before Magistrate Frank J. Lynch set for 9:30 on 2/28/00*] on the motion for preliminary injunction relief (DE #93). On 2/28/00, The Court held an Evidentiary Hearing on Plaintiff's Motions for Preliminary Injunctive

Relief. The minutes of this Evidentiary Hearing were recorded by the Court Reporter. Plaintiff was the only witness to testify at this Evidentiary Hearing. Defendants did not testify or offer any witnesses in their behalf. Plaintiff offered exhibits as evidence to the Evidentiary Hearing held on February 28, 2000. (DE # 165. On 3/6/00, Mason filed his PLAINTIFF'S SUPPLEMENT TO EVIDENTIARY HEARING FOR PRELIMINARY INJUNCTIVE RELIEF OR PLAINTIFF'S MOTION TO CONTINUE EVIDENTIARY HEARING. (DE #164). On 3/13/00, Mason filed his PLAINTIFF'S SUPPLEMENTAL EXHIBITS TO MOTION FOR PRELIMINARY INJUNCTIVE RELIEF AND PLAINTIFF'S NEWLY ACQUIRED EVIDENCE. (DE #171). Plaintiff filed his RESPONSE IN OPPOSITION TO HEARTLAND LIBRARY RESPONSE TO PLAINTIFF'S SUPPLEMENTAL EXHIBITS TO MOTION FOR PRELIMINARY INJUNCTIVE RELIEF. (DE #183). Plaintiff filed his PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT AS TO RETALIATION CLAIM UNDER TITLE VII OR PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF AND MEMORANDUM OF LAW on 6/26/00 (DE #211);(DE #214). This summary judgment motion by plaintiff included audio tapes of sworn testimony taken at State of Florida Unemployment Compensation hearings held between March 9, 1999 and March 2000. Plaintiff filed his PLAINTIFF'S NOTICE OF FILING OF SWORN TESTIMONY ON AUDIO TAPE on 6/28/00. This notice including audio tapes of sworn testimony taken at State of Florida Unemployment Compensation hearings held between March 9, 1999 and March 2000.. Plaintiff used all audiotapes in support of various motions that were pending before the Court. Plaintiff submitted to the Court his PLAINTIFF'S MOTION FOR EXPEDITED RULING ON PLAINTIFF'S PRIOR REQUEST FOR PRELIMINARY INJUNCTION¹ on 8/23/00. (DE #288). In order to

¹ This Motion also included Plaintiff's **AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION.**

augment his PLAINTIFF'S MOTION FOR EXPEDITED RULING ON PLAINTIFF'S PRIOR REQUEST FOR PRELIMINARY INJUNCTION, plaintiff filed his NOTICE OF FILING AFFIDAVIT OF NINA ST GERMAIN IN SUPPORT OF PLAINTIFF'S MOTION FOR EXPEDITED RULING ON PLAINTIFF'S PRIOR REQUEST FOR PRELIMINARY INJUNCTION on 9/1/00. (DE #295). The Court rendered its Omnibus Order denying plaintiff's motion for expedited ruling on plaintiff's prior request for preliminary injunctive relief on 9/6/00. (DE #300). Plaintiff submitted a PLAINTIFF'S MOTION TO DECLARE PLAINTIFF'S MOTION FOR EXPEDITED RULING ON PLAINTIFF'S PRIOR REQUEST FOR PRELIMINARY INJUNCTION on 9/7/00. (DE #305). Plaintiff sought to have his motion for a preliminary injunction which had been pending since 11/24/99 declared an emergency within the meaning of Local Rule 7.1.E. Defendants submitted a brief in opposition to plaintiff's request for an emergency ruling on 9/8/00. (DE #309). The Court had already entered its Order denying plaintiff's request for an emergency ruling on his motion for a preliminary injunction on 9/7/00, before the defendants' responded to plaintiff's motion on 9/8/00. (DE #306). Mason submitted his APPEAL TO DISTRICT JUDGE OF MAGISTRATE'S ORDER DENYING PLAINTIFF'S MOTION FOR EXPEDITED RULING ON PLAINTIFF'S PRIOR REQUEST FOR PRELIMINARY INJUNCTION on 9/21/00. (DE #333). The Court rendered its Order denying plaintiff's appeal for a preliminary injunction on 11/2/00. (DE #410). On 2/26/01, plaintiff submitted a motion for clarification with respect to the status of his pending motion for a preliminary injunction. (DE #485). Plaintiff also submitted a PLAINTIFF'S STATEMENT OF UNDISPUTED AND UNCONTESTED MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION on 3/1/01. (DE #507).

Plaintiff's motion for clarification was denied without explanation on 2-27-01. (DE #493).

DEFENDANTS MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

On 6/15/00, Defendants filed their DEFENDANTS' MOTION FOR A PRELIMINARY INJUNCTION (DE #199). Defendants' in their motion sought to have plaintiff, a layman and not an attorney, barred from communicating directly with the government officials in this matter. Plaintiff filed his PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR A PRELIMINARY INJUNCTION on 6/19/00 (DE #200). On the very same day that plaintiff filed his response to DEFENDANTS' MOTION FOR A PRELIMINARY INJUNCTION, 6/19/00, The Court and specifically the Magistrate Judge rendered his ORDER granting Defendants' motion for preliminary injunction. (DE #201). The Court referred to its Order granting Defendants' motion for preliminary injunction as a "[p]retrial issue and not an injunction per se". The Court issued this order without authoring a memorandum of law citing legal authority for issuing its "pretrial issue". The Court issued its Order granting DEFENDANTS' MOTION FOR A PRELIMINARY INJUNCTION without allowing the plaintiff the benefit of an evidentiary hearing. On 7/12/00, Defendants filed a DEFENANTS' MOTION FOR LEAVE TO FILE DEFENDANTS' RENEWED MOTION FOR MOTION FOR PRELIMINARY INJUNCTION and their DEFENDANTS' RENEWED MOTION FOR MOTION FOR PRELIMINARY INJUNCTION. (DE #231). Defendants sought to have Mason barred from communicating with the defendants regarding any lawsuit the plaintiff had pending against the defendants. Defendants also sought to have plaintiff barred from communicating with the defendants regarding lawsuits against the defendants for which

plaintiff is or was not a party. Additionally, defendants sought to have plaintiff go through their attorneys to make Public Records Request under Florida Law. Defendants cited no legal authority in neither of their motions for preliminary injunctions. On 7/17/00, Defendants filed a Motion For Contempt and Sanctions. (DE #234). Defendants sought to have sanctions imposed upon the plaintiff for what they allege to have been a violation of the Court's order denying plaintiff, a non-lawyer, from communicating with government officials. Plaintiff filed his PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR CONTEMPT AND SANCTIONS on 7/20/00. (DE #239). The Court issued its Order granting defendants' renewed motion for preliminary injunction on 7/25/00 and denying defendants' motions for sanctions. (DE #246). In issuing its Order granting defendants' renewed motion for preliminary injunction, The Court did not write a memorandum of law with appropriate legal authority for granting defendants' renewed motion for preliminary injunction. There was no evidentiary hearing held prior to the issuance of the defendants' renewed motion for preliminary injunction. Plaintiff submitted to the Court his PLAINTIFF'S MOTION TO RESCIND ORDER ON DEFENDANTS' RENEWED MOTION FOR PRELIMINARY INJUNCTION FOR PRELIMINARY INJUNCTION (MOTION FILED JULY 12, 2000) AND DEFENDANTS' MOTION FOR CONTEMPT AND SANCTIONS (DE #234) on 8/7/00. (DE #264). The Court issued its Order denying Plaintiff's motion to rescind order on Defendants' renewed motion for preliminary injunction for preliminary injunction (motion filed July 12, 2000) and Defendants' motion for contempt and sanctions on 8/15/00. (DE #279). The Court issued its Order denying Plaintiff's motion to rescind its order granting Defendants' renewed motion for preliminary injunction on 8/15/00 despite the

fact that PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO RESCIND ORDER ON DEFENDANTS' RENEWED MOTION FOR PRELIMINARY INJUNCTION MOTION FILED ON JULY 12, 2000 AND DEFENANTS' MOTION FOR CONTEMPT AND SANCTIONS, which was timely filed, was not filed until 8/16/00. (DE #284). On 9/25/00, Mason filed his APPEAL TO DISTRICT JUDGE GRAHAM OF MAGISTRATE JUDGE'S ORDER (DE #264) DENIYING PLAINTIFF'S MOTION TO RESCIND ORDER ON DEFENDANTS' RENEWED MOTION FOR PRELIMINARY INJUNCTION FOR PRELIMINARY INJUNCTION (MOTION FILED JULY 12, 2000) AND DEFENDANTS' MOTION FOR CONTEMPT AND SANCTIONS (DE #234) See (DE #334). Mason replied with his PLAINTIFF'S RESPONSE DEFENDANTS' RESPONSE TO APPEAL TO DISTRICT JUDGE GRAHAM OF MAGISTRATE JUDGE'S ORDER (DE #264) DENIYING PLAINTIFF'S MOTION TO RESCIND ORDER ON DEFENDANTS' RENEWED MOTION FOR PRELIMINARY INJUNCTION FOR PRELIMINARY INJUNCTION (MOTION FILED JULY 12, 2000) AND DEFENDANTS' MOTION FOR CONTEMPT AND SANCTIONS (DE #234) on 10/10/00. (DE #349). On 11/2/00, the Court entered its order denying plaintiff's appeal. (DE # 407). On 3/5/01, plaintiff submitted his PLAINTIFF'S MOTION TO VACATE PRETRIAL DISCOVERY ISSUE (DE #201:246) which sought to vacate the court's [DE #201:246] previous orders granting the defendants an injunction. See (DE #515). Plaintiff also sought a memorandum of law from the court explaining why it thought it had the legal authority and jurisdiction to issue these "injunctions". Plaintiff's motion to vacate was denied by court order on 3/6/01. (DE #524). The court refused, yet again, to explain to plaintiff where it got the legal authority to issue these injunctions.

SUMMARY OF THE ARGUMENT

Plaintiff/Petitioner, Marcellus M. Mason, Jr. , hereinafter “Mason” filed his motion for a preliminary injunction with the Court in November of 1999. The Court held an Evidentiary hearing on February 28, 2000. Mason was the only witness to testify. Mason has offered scores of documents to support his prayer for relief. Mason has even offered sworn testimony on audio-tape taken during unemployment compensation hearings. Mason has offered two motions to the Court for an expedited hearing and was denied. Mason has not had a ruling on the merits. The Court has not authored a memorandum of law which would justify a decision to either grant or deny Mason’s motion for preliminary injunctive relief. Plaintiff filed a motion for clarification on 2/26/01, [DE# 485] specifically requesting ” *plaintiff requests that this court clarify its position with respect to the various motions plaintiff has submitted for a preliminary injunction. Additionally, plaintiff respectfully requests that this court set forth the reasons for its decision in a memorandum of law setting forth both its findings of fact and conclusions of law.*” On 2/27/01, [DE #493], the court rendered an order denying plaintiff’s motion for clarification. To the extent that the Court has not specifically authored an opinion that either grants or denies Mason’s motion for injunctive relief, the Court is in error and abusing its discretion.

The Court granted the government defendants in this matter “*a pretrial discovery issue and not an injunction issue per se*”, or a preliminary injunction, or a temporary restraining order. The defendants sought an injunction to prohibit Marcellus M. Mason, Jr. , a non-lawyer, from contacting or communicating with the defendants directly in this matter, who are governmental officials. There is no legal prohibition against non-lawyer parties contacting each other directly even if one or both are represented by counsel. The court order granting the defendants “*a pretrial discovery issue and not an injunction issue per se*” was unconstitutional in that petitioner’s First Amendment rights were summarily and thoughtlessly dismissed. The court order represented a departure from the essential requirements of law and represented an exercise judicial over-reaching.

The Court granted the government defendants in this matter “*a pretrial discovery issue and not an injunction issue per se*”, or a preliminary injunction, or a temporary restraining order. The defendants sought an injunction to prohibit Marcellus M. Mason, Jr. , a non-lawyer, from making Florida Public Record request to the defendants directly in this matter, who are governmental officials. The court issued an order granting the government defendants “*a pretrial discovery issue and not an injunction issue per se*” requiring that the plaintiff submit his Florida Public Record requests to private attorneys located in Tampa, Florida or about 100 miles away from where the records are kept in Sebring, FL. The court order granting the defendants “*a pretrial discovery issue and not an injunction issue per se*” was unconstitutional in that petitioner’s First Amendment rights were summarily and thoughtlessly dismissed. The federal courts have no jurisdiction over Florida Public Records requests. The court order represented a

departure from the essential requirements of law and represented an exercise judicial over-reaching.

ISSUE ARGUMENTS

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

- I. Is it an abuse of discretion or a dereliction of duty for a federal Magistrate Judge or a District Judge to refuse to rule on a motion for a preliminary injunction or even to give an explanation to the plaintiff why the court refuses to rule on the motion?

Standard of Review

"We review the district court's denial of injunctive relief under an abuse of discretion standard, see Simmons v. Conger, 86 F.3d 1080, 1085 (11th Cir. 1996), but "we review de novo determinations of law made by the district court en route," Teper v. Miller, 82 F.3d 989, 993 (11th Cir. 1996). This Court in Citizens. Concerned About Children v. School Bd., 193 F.3d 1285 (11th Cir. 1999) stated, "[w]e acknowledge that an order that does not rule on a request for injunctive relief, but that has the effect of denying it, may be immediately appealable."

Discussion

Plaintiff petitioned the Court on November 24, 1999 for a preliminary injunction to reinstate him to his former position. (DE #39). An evidentiary hearing was held on February 28, 2000. (DE #160). At this evidentiary hearing, Mason was the only witness to offer any sworn testimony. Defendants through their counsel opted not to testify and subject themselves to cross-examination. In this matter, defendants have **no testimony** on the record. Additionally and equally important, defendants offer no documents in support of “legitimate” reason to fire Mason. This Court in Baker,*Infra*, held that a plaintiff was entitled to presumption of irreparable harm as a matter of law if the administrative requirements of the EEOC were complied with. The burden is on the defendants to overcome the presumption of irreparable harm. Plaintiff was also entitled to irreparable harm as set forth in his PLAINTIFF’S MOTION FOR EXPEDITED RULING ON PLAINTIFF’S PRIOR REQUEST FOR PRELIMINARY INJUCTION (DE #288) and APPEAL TO DISTRICT JUDGE OF MAGISTRATE’S ORDER DENYING PLAINTIFF’S MOTION FOR EXPEDITED RULING ON PLAINTIFF’S PRIOR REQUEST FOR PRELIMINARY INJUCTION. (DE #333).. Moreover, plaintiff also submitted to the court a statement of uncontested facts in support of his motion for a preliminary injunction. (DE # 507). Mason filed a motion for clarification with respect to his prior motion for a preliminary injunction on or about February 26, 2001 [DE #485]. The court denied Mason’s motion for clarification without any explanation [DE #493]. See Exhibit A-1. Mason had previously filed two motions for an expedited ruling [DE #'s 288, 305] which were both denied without explanation by the Magistrate Judge. See Exhibits A-2 and A-3. Plaintiff also filed an appeal [DE #333] of the Magistrate’s Judges

denial of plaintiff's motion for an expedited ruling with the District Judge which was denied. See Exhibit A-4.

Plaintiff submitted his motion for a preliminary injunction on November 24, 1999 which to date has not had a proper ruling on the merits. There is absolutely no reason why the court should not have ruled on this motion based on the voluminous record. The district court does not have the authority to deny the plaintiff a legal remedy by doing nothing. The court has been unwillingly and has adamantly refused to state why it won't rule on the plaintiff's motion for a preliminary injunction. The court does not need 16 months to rule on a motion for a preliminary injunction. This a clearly a case of abuse of discretion or even arguably dereliction of duty by the district judge and/or magistrate judge.

DEFENDANTS MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

- II. Does a federal Magistrate Judge have the legal authority to issue "*a pretrial discovery issue and not an injunction issue per se*" that bars the plaintiff, a non-lawyer, from communicating directly with the government defendants?

Standard of Review

"We review the district court's denial of injunctive relief under an abuse of discretion standard, see Simmons v. Conger, 86 F.3d 1080, 1085 (11th Cir. 1996), but "we review de novo determinations of law made by the district court en route," Teper v. Miller, 82 F.3d 989, 993 (11th Cir. 1996). " Kidder, Peabody & Co., Incorp. v. Brandt, 131 F.3d 1001 (11th Cir. 1997).

Discussion

Defendants made a couple of motions to the Court for a preliminary injunction to prohibit Mason, a non-lawyer, from communicating directly with the defendants in this action who are government officials. (DE #199);(DE #231). Defendants also filed a motion for contempt and sanctions. (DE #234). Plaintiff filed his responses to the foregoing motions. (DE #200);(DE #239). The Court granted both motions for preliminary injunctions [DE #201];(DE #246.] See Exhibits A-5 and A-6. The court referred to these orders granting the defendants' motions as "*a pretrial discovery issue and not an injunction issue per se*". The Court's Orders granting defendants their preliminary injunctions represented an essential departure from the requirements of law and a blatant abuse of judicial authority. In the first instance, defendants' motion for a preliminary injunction was granted by a Magistrate Judge. Pursuant to the Magistrates Act or 28 U.S.C. § 636 (b)(1)(A), a preliminary injunction is a dispositive motion and as such a Magistrate Judge does not have the legal authority to grant injunctive relief. A Magistrate Judge may not issue an otherwise illegal preliminary injunction or temporary restraining order for which he has no legal, statutory, or constitutional authority to issue and cloak in a mystical device called "*a pretrial discovery issue and not an injunction issue per se*" to make an blatantly illegal act legal. Called. "*A pretrial discovery issue and not an injunction issue per se*" appears to a mystical construct of the Magistrate Judge as the plaintiff has not been able to find such a remedy in the voluminous case law he has studied. What plaintiff really finds outrageous is that on appeal to the District Judge, the District Judge concludes that the Magistrate Judge's orders are not clearly erroneous. See Exhibit A-4. Plaintiff submits that for a judge, any judge to issue an

order for which he has no legal authority to issue is well past “clearly erroneous”.

Secondly, assuming *arguendo* that a Magistrate Judge does have the authority to grant injunctive relief, the Magistrate Judge’ Order granting of preliminary injunctive relief would represent a departure from the essential requirements of law because no evidentiary hearing was conducted. “*Federal Rule of Civil Procedure 65(a) states, “No preliminary injunction shall be issued without notice to the adverse party.” The United States Supreme Court has noted in passing that “[t]he notice required by Rule 65(a) before a preliminary injunction can issue implies a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition.” Baker v. Buckeye Cellulose Corp., 856 F.2d 167 (11th Cir.1988). It is settled law as espoused in Baker that the moving party must meet the following four prong test:*

- (1) a substantial likelihood that she will ultimately prevail on the merits;
- (2) that she will suffer irreparable injury unless the injunction issues;
- (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and
- (4) that if issued, the injunction would not be adverse to the public interest.

There is no showing that defendants in this matter met any of the requirements of the four-prong test for preliminary injunctive relief. The Court in its Orders granting defendants injunctive relief did not author a written opinion addressing the requirements that must be met for a moving party to obtain injunctive relief. (DE # 201);(DE #246). Moreover, what the petitioner finds particularly offensive and galling is that where the trial court has both the jurisdiction and duty to act on plaintiff’s motion for a preliminary injunction, it won’t act or explain to the plaintiff why it won’t act. What the plaintiff finds

more even more yet galling, outrageous, and prejudicial is that the Magistrate Judge did not order the governments defendants in this matter not to communicate with the plaintiff directly. Lastly, and more importantly the Court has no legal authority to order that a party, being a non-lawyer, to not communicate directly with a represented party. Moreover, this is especially true, when the non-lawyer party communicates with a government party. Plaintiff is well within his 1st Amendment rights to petition the government, civil lawsuit notwithstanding. Mason is not an attorney and is not subject to the Florida Bar Rules or any other body governing the professional behavior of attorneys. The comments to Florida Bar Rule 4-4.2 states the following:

This rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. 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.

Courts hearing this type of issue have ruled that a non-lawyer party to a civil suit may communicate directly with an adverse party even if represented by counsel. See U.S. v. Ward, 895 F.Supp. 1000, (N.D. Ill. 1995); E.E.O.C. v. McDonnell Douglas Corp., 948 F.Supp. 54; Miano v. AC & R Advertising, Inc, 148 F.R.D. 68. *“Therefore, the Rule does not prohibit, even after the commencement of an action, a party from interviewing those individuals with whom the lawyer cannot communicate under DR 7-103(A).”* Tucker v. Norfolk & Western Ry. Co., 849 F.Supp.1096,1098 (E.D.Pa.1994). Moreover in at least one case a court has held that even a lawyer who is merely a party to an action may

have ex parte communication with a represented adverse party. Specifically, the Connecticut Supreme Court concluded:

“The grievance panel, the reviewing committee and the trial court all correctly concluded that the plaintiff’s letter was communication between litigants and that the plaintiff had a right to make such a communication because he was not representing a client. There was no evidence that suggests that the letter was written by the plaintiff in a representative capacity. While the plaintiff’s conduct may have been less than prudent, it did not violate Rule 4.2”. Pinsky v. Statewide Grievance Committee, 578 A.2d 1075,1079 (Conn. 1990).

Petitioner has a First Amendment right to communicate directly with the government notwithstanding any litigation he may have pending with the same government agents, supervisory employees or not. The First Amendment to the 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.

No where in the First Amendment does it say that a citizen must address grievances to a private attorney. Plaintiff does not lose his First Amendment rights merely because he filed a lawsuit against the government defendants. Plaintiff has every right of free speech that other citizens not a party to this litigation have.

Neither the Court nor the government defendants in this action have offered up any legal authority prohibiting a non-lawyer from contacting directly a party that is a government official directly even though the government party may be represented by counsel. The preliminary injunction issued by the Court prohibiting Mason from contacting his government directly is violative of Mason’s 1st Amendment rights and as such the Order is illegal and *void ab initio*. The Order granting defendants preliminary injunctive relief is illegal and must be reversed. Finally, this Court in United States v.

Jefferson County, 720 F.2d 1511,n.21 (11th Cir.1983) held:

Obviously, where a preliminary injunction has been granted based on an error of law even as to only one of the four prerequisites, the injunction must fall because the movant has not met his burden of persuasion on all four counts.

III. Does a federal Magistrate Judge have the legal authority to issue “a *pretrial discovery issue and not an injunction issue per se*” that tells the plaintiff how he may get documents under the Florida Public Records Act?

The Federal Courts have no jurisdiction under Chapter 119 of the Florida Statutes to regulate how Florida Public Records are accessed. Neither the trial court nor the defendants’ counsel has cited any legal authority for the proposition that a federal judge has jurisdiction over Chapter 119 of the Florida Statutes or the Public Records Act. The trial court issued an order stating that the petitioner must first make his Florida Public Records request through the defendants’ non-government, private, and non-custodial attorneys and not directly to the government defendants who have the constitutional and statutory authority to produce public records under Florida Law. Moreover, the Magistrate Judge, in attempting to interpret Florida Law attempts to afford protection to the defendants that the Florida Legislature and the Florida Courts won’t do. The Magistrate Judge attempts to substitute his judgment and wisdom for that of the Florida Legislature and the Florida Courts. Specifically, in commenting on the disadvantage of public agencies in having to comply with Chapter 119 of the Florida Statutes and having litigation pending against them, the court in Tober v. Sanchez, 417 So.2d 1053, 1055 (Fla. App. Dist. 3 1982) succinctly and aptly stated: “*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 persons, 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. Clearly, the Magistrate Judge is trying to impose upon the petitioner constraints in accessing public records under Florida Law that the Florida Courts and the Florida Legislature have decided in their wisdom not to do. Defendants' private counsel have no right to be notified before the plaintiff or anybody else for that matter makes a public records' request. The Magistrate Judge has threatened to recommend dismissal of plaintiff's lawsuit for making legal public records request. Such an act would be unconscionable. The Magistrate Judge has given the defendants in this matter, who are desperate to escape liability on anything but the merits, a dismissal weapon. Moreover, when the Magistrate Judge decided that he wanted the responsibility of administering public record requests by the plaintiff he did not layout an administration plan and refused plaintiff's motion for clarification raising administrative issues regarding this so-called "*pretrial discovery issue and not an injunction issue per se*".

INADEQUACY OF OTHER RELIEF

In this matter, the Magistrate Judge has violated the petitioner's First Amendment rights. The petitioner can not make a direct appeal after final judgement is rendered in this highly litigious matter to give him his First Amendment rights back after they are in fact already lost. The petitioner can not sue the District Judge or the Magistrate for the deprivation of his First Amendment rights. The District Judge and the Magistrate Judge appear to have absolute immunity to make bad decisions and apparently to make decisions for which they lack legal authority to make in the first instance. Petitioners

loss of “free speech” is by definition and law irreparable harm. *“It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction.”* Cate v. Oldham, 707 F.2d 1176, 1188 (11th Cir. 1983). Moreover, as plaintiff has filed motion for a preliminary injunction pursuant to Title VII and has met the administrative requirements as set forth by this court in Baker v. Buckeye Cellulose Corp., 856 F.2d 167 (11th Cir.1988) plaintiff has a presumption of irreparable harm. Moreover, plaintiff’s motion for a preliminary injunction also set forth competent evidence that plaintiff was entitled to irreparable harm because of his exercise in “free speech” based upon the fact that the defendants retaliated against the plaintiff in part because the plaintiff “threatened” to expose their wrongdoing to the Florida Commission on Ethics. The Florida Commission on Ethics did find that one of defendants’ supervisory agents was in fact guilty of an ethics violation. Plaintiff filed the probable cause decision rendered by the Florida Commission on Ethics in support of his claim for irreparable harm under the Florida Whistle-Blower statute with the court.

RELIEF SOUGHT

WHEREFORE, and based upon the foregoing. Mason requests that this Court remand this matter to the trial court directing it do the following:

Plaintiff requests that this appellate court issued the following orders:

1. Issue an Order compelling the District Judge to do his constitutional duty and render a decision supported by findings of fact and conclusions of law on petitioner's prior request for a preliminary injunction. Moreover, plaintiff would ask that this court issue an order to show cause to the District Judge, asking why plaintiff's motion for a preliminary injunction should not be granted.
2. Issue an Order vacating the order granting the Defendants a "*pretrial discovery issue and not an injunction issue per se* " or the preliminary injunction requiring the plaintiff/petitioner, a non-lawyer, to not communicate with the defendant government officials directly. Plaintiff would also ask that the court issue an order stating that the plaintiff may speak or to communicate with any government official directly in a lawful manner at any time the petitioner so desires.
4. Issue an Order vacating the order granting the Defendants a "*pretrial discovery issue and not an injunction issue per se* " or the preliminary injunction requiring the plaintiff/petitioner, a non-lawyer, make Florida Public Record requests through a private attorney located 100 miles away from where the public records are kept. Plaintiff would also ask that the court issue an order stating that the plaintiff may make public records request in manner and without restriction consistent with Florida Law. Moreover, plaintiff would ask that the court inform the district judge that it is the job of the State of Florida and its government and judiciary to administer the Florida Public Records Act.
5. Issue an order taxing the Court Costs of this matter to respondents.

Respectfully Submitted:
Marcellus M. Mason, Jr.
218 Florida Drive
Sebring, FL 33870
863-314-9577

Dated this 8th day of March, 2001

CERTIFICATE OF COMPLIANCE

I, Marcellus M. Mason Jr., hereby declare that this brief is in compliance with the volume limitation as set forth by this Court. This brief as reported by the word count function of Microsoft Word 97 contains less than 14,000 words including the table of contents, table of authorities, and other items not countable towards the 14,000 word count limit.

Respectfully Submitted:

Marcellus M. Mason, Jr.
218 Florida Drive
Sebring, FL 33870
863-314-9577

Dated this 8th day of March, 2001

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, Thursday, March 8, 2001, to: Allen, Norton & Blue, 324 South Hyde Park Avenue, Suite 350, Tampa, Florida, 33606 and copy has been provided to Donald L. Graham, United States District Judge, Southern District of Florida.



APPENDIX

EXHIBIT NO.	DOCKET ENTRY NUMBER	NATURE OF ORDER
A-1	493	Order dated 2-27-2001 denying plaintiff's motion for clarification
A-2	300	Order dated 9-6-2000 denying plaintiff's motion for expedited ruling
A-3	306	Order dated 9-7-2000 denying plaintiff's motion for expedited ruling
A-4	DE #410	Order dated 11-2-00 denying plaintiff's appeal of Magistrate's Order denying plaintiff's motion for an expedited ruling
A-5	201	Order dated 6-19-200 granting defendants a preliminary injunction
A-6	246	Order dated 6-19-200 granting defendants a "renewed" preliminary injunction