

United States Court of Appeals for the Eleventh Circuit.

L.T. No. 99-14027-CIV

MARCELLUS M. MASON, JR.,

Plaintiff/Appellant/Petitioner

v.

HIGHLANDS COUNTY BOARD OF COUNTY
COMMISSIONERS,

Defendant/Appellees/Respondent

In re Marcellus M. Mason, Jr. , Petitioner

Petition for Writ of Mandamus And Petition For Writ Of Prohibition

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

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

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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

ISSUES PRESENTED

The district judge has grossly abused his discretion by imposing unwarranted severe restrictions on how the Plaintiff exercises his right to access the Courts.

The district judge has violated the Code of Conduct for Federal Judges. The District Court has willfully and blatantly failed in his duty to handle the business of his Court in a timely manner.

The district court's issuance of a "pretrial discovery issue and not an injunction" per se is patently illegal and constituted a naked and aggressive act of usurpation.

The District Judge should be disqualified from presiding over any matter in which this Petitioner is a party.

JURISDICTIONAL STATEMENT

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.

Petitioner brought this action against the Government defendants, Highlands County Board of County Commissioners, Hardee Highlands County Board of County Commissioners, Okeechobee Highlands County Board of County Commissioners, and Heartland Library Cooperative for violations of Title VII and a host of other violations of Federal and State Law.

REASONS WHY THE WRIT SHOULD ISSUE

"It is well established that mandamus is an extraordinary remedy, which is available only to correct a clear abuse of discretion or usurpation of judicial power." In Re: Vicki Lopez-Lukis, 113 F.3d 1187 (11th Cir. 1997). "Mandamus is a common law writ used to direct an official to perform his official duties. Where, as here, the judge refuses to rule on a motion challenging personal jurisdiction, it is appropriate to issue the writ." Berens v. Cobb, 539 So.2d 24, 25 (Fla.App. 2 Dist. 1989)(citing State ex rel. Buckwalter v. City of Lakeland, 112 Fla. 200,150 So. 508 (1933)). "A district judge's refusal to disqualify himself can be reviewed in this circuit by way of a petition for a writ of mandamus." In Re Beard, 811 F.2d 818 (4th Cir. 1987). In Chudasama v. Mazda Motor Corporation, 123 F.3d 1353 (11th Cir. 1997), this Court stated:

We recognize that district courts enjoy broad discretion in deciding how best to manage the cases before them. This discretion is not unfettered, however. When a litigant's rights are materially prejudiced by the district court's mismanagement of a case, we must redress the abuse of discretion. Failure to consider and rule on significant pretrial motions before issuing dispositive orders can be an abuse of discretion. See, e.g., In re School Asbestos Litig., 977 F.2d 764, 792-93 (3d Cir. 1992) (granting writ of mandamus as remedy for district court's "arbitrar[y] refus[al] to rule on a summary judgment motion");

"No court has ever precisely defined "sphere of discretionary power," but it is clear that an extraordinary Writ may be appropriate to prevent a trial court from making a discretionary decision where a statute effectively removes the decision from the realm of discretion." In Re Estelle 516 F.2d 480,483 (5th Cir 1975). Similarly, this Court has expressly stated that mandamus is appropriate where a federal judge exceeds his judicial power. In Re Cooper, 971 F.2d 640 (11th Cir. 1992). See also SEC v. Krentzman, 397 F.2d 55, 59 (5th Cir. 1968). (Court issued a writ of mandamus where district court exercised authority the district court thought it had, but did not); In Re Patenaude, 210 F.3d 135,140 (3rd Cir. 2000) ([W]here a court commits a clear error of law, a right to relief is clear and indisputable").

In the matter at bar, the Petitioner will set forth sufficient facts to show where this Court and other Courts have granted relief in the form of mandamus where the abuses have not been

anywhere near as widespread as alleged in this case. In the instant case, the Petitioner will show that the District Judge, Donald L. Graham has been guilty of the following:

- Graham has usurped the power of law enforcement.
- Graham has usurped the power of the “Legislature.”
- Graham improperly interjected himself into matters under the Florida Public Records Act.
- Grant has allowed significant and material pretrial motions to languish in the Court without making a decision. Petitioner will show that Graham has allowed motions and appeals to go for months without being addressed. Petitioner will show that Graham has granted summary judgments without addressing filings by this Petitioner, which attacks the summary judgment. Graham has repeatedly refused to rule on the Petitioner’s Motions For Summary Judgment.
- Graham has had Petitioner’s Motion for a Preliminary Injunction to languish in his Court and die on the vine without a ruling on the merits, despite the fact that the motion has been pending since November 24, 1999.
- Graham has failed to conduct proper “de novo” reviews when required. Graham has effectively undermined the will of Congress by allowing a Magistrate Judge to decide dispositive matters without the express authorization of all the parties. The Magistrate Judge has been granted “de facto” dispositive authority by Graham.
- Graham has been dishonest in claiming that matters have been litigated when they have not been litigated.
- On numerous occasions, Graham has exercised judicial authority without explaining the law and the facts that underlie his decisions. In this respect Graham has made a host of arbitrary and capricious decisions.
- Graham has been guilty of gross mismanagement and malfeasance in every case to which this Petitioner has been a party to.

INADEQUACY OF OTHER REMEDIES

There is no other adequate remedy available because an illegal act is void and should be accorded no legal effect. In the instant case, as will pointed out infra, the District Court did not have the legal authority to require the Petitioner to request the permission of private for profit attorneys in order to communicate with the Government and to request Public Records under Florida Law. Petitioner should not be forced to file a direct appeal to explain why the District Judge exceeded his judicial authority, especially since the District Judge has not bothered to state under what law or source of legal authority he was acting under. “[T]he writ “has traditionally been used in the federal courts only `to confine an inferior court to a lawful exercise of its prescribed jurisdiction (emphasis added) or to compel it to exercise its authority when it is its duty to do so.” Kerr v. United States District Court, 426 U.S. 394, 402 (1976).”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.” Dellenbach v. Letsinger, 889 F.2d 755 (7th Cir. 1989) (quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872)).

A direct appeal would cause this Court , an appellate court, to literally make scores of decisions ‘de novo’ because the trial court made no decisions. There have been multiple summary judgment motions and quite literally scores of other material pretrial motions the trial court did not attempt to address. Stated alternatively, this Court, an appellate court, would then be forced to become a “de facto” trial court.

A direct appeal is inadequate to remedy the Plaintiff’s Motion for a Preliminary Injunction in Case No. 99-14027 because the district court made no ruling on the merits of this motion that has been pending since November 24, 1999. Should the Petitioner file an appeal, this Court, having only appellate review under the abuse of discretion standard¹, would be forced to remand the matter to the district court for a ruling and a decision within the parameters set forth in Baker v. Buckeye Cellulose Corp., 856 F.2d 167 (11th Cir.1988). Under this scenario, a preliminary injunction, which

is designed to protect the status quo, would be useless given that this case was filed in February 1999.

The sheer volume of documents and pleadings in this matter, Case No. 99-14027, is massive and oppressive would require probably more than a year to resolve a case that has been pending since February 1999. The docket entries in this matter approach 900 entries. This coupled with the amount of documents and pleadings generated in other related case raises the docket entry count to a number approaching 1100. "[A] technically available remedy will not preclude mandamus when the other relief is uncertain, tedious, burdensome, slow, inconvenient, inappropriate, or ineffective." 52 Am Jur. 2d. Mandamus, § 34; See also 55 C. J. S Mandamus § 17 (Mandamus may lie where other existing remedies are tedious and are not sufficiently speedy);Salvador v. Fennelly, 593 So.2d 1091,1092 n.1 (Fla.App. 4 Dist. 1992)(Court exercised jurisdiction to utilize a writ of mandamus here where the speedy determination of a purely legal question regarding the duty of the trial court would not only end this particular dispute, but would also hopefully furnish an authoritative guide for trial courts in the future). Indeed the District Judge has deliberately been obstructing the appeals process by sitting on motions to proceed on appeal *in forma pauperis* for months. Moreover, as a direct result of the Court's Order (DE 878), the Clerk, S.D. Fla., has returned the Petitioner's Notices of Appeals. The District Judge has arrogated his own authority and improper behavior by attempting to deny the Petitioner of his statutory right to appeal.

Mandamus should issue because the Defendants and their counsel are having *ex parte* communications with the District Court on their motion for attorneys' fees and costs. The District Judge has precluded the Petitioner from opposing this motion. Petitioner believes the Defendants attorneys are submitting fraudulent charges.

A direct appeal is inadequate because this Court will have to devote its attention to the matter of authenticating some 25 one-hour audiotapes that the Petitioner submitted to the trial court as evidence. This Court will either have to listen to the 25 one-hour tapes or remand them to the district court for disposition. Despite numerous requests from the Plaintiff, the trial court failed to

¹ See Cit. Concerned About Children v. School Bd., 193 F.3d 1285 (11th Cir. 1999)

resolve this matter. These 25 one-hour audiotapes are critical to the Petitioner's case as they form the basis of the Petitioner's motion for summary judgment and motion for a preliminary injunction. These audiotapes also serve to undermine the defendants' motion for summary judgment.

This court should resolve the matter of the Petitioner's right to communicate with the government now and in lieu of an appeal because this Petitioner, Marcellus M. Mason, Jr., has every intention of using his First Amendment' Rights to communicate with the Government. If this Court declines to resolve this matter by way of Mandamus and quickly, this Court is certain to visit the same issue again.

A direct appeal is inadequate because the Defendants' counsel is using the Order (DE #878) of the district court enjoining the Petitioner from maintaining and initiating actions in federal court to prove in State Court that the Petitioner has a "habit" of filing "frivolous" lawsuits. Petitioner is prejudiced by this ploy in that Defendants' counsel is using the mere conclusory order of the District Court to the detriment of the Petitioner in State Court, while a lengthy federal appeals process is ongoing. The State Court, while giving the customary deference to courts of competence jurisdiction and federal courts in particular, will have acted with this bad information to the detriment of the Petitioner. At the end of a lengthy federal appeals process, this Court will not be able to put the "genie back into the bottle," if this Court finds in favor of the Petitioner. This action would necessitate yet another appeal being initiated by the Petitioner. Defendant's counsel should not be able to use the lengthy and cumbersome federal appeals process and submit matters to State Court that are being vigorously challenged by this Petitioner.

A direct appeal is inadequate because the District Court has deprived the Petitioner of his fundamental constitutional rights, free speech and access to the Courts. Petitioner's 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).

The granting of relief in the form of mandamus will be dispositive and decisive in Case No. 01-14224-CV-Middlebrooks where the District Judge and the Magistrate Judge are being sued for

acting in clear violation of jurisdiction for issuing orders requiring the Petitioner to seek the permission of private for profit attorneys in order to communicate with the government and dismissing a complaint as a result of these patently illegal orders. “[A] judge is not immune from liability for nonjudicial actions... [A] judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” Mireles v. Waco, 502 U.S. 9, 12-13 (1991). Based upon Mireles, Plaintiff contends that neither of the Judges in this action have absolute immunity because of the facts set forth herein.

Mandamus should issue because given the atrocities of this case, public confidence in the Federal Judiciary has been compromised. The atrocities committed in this case are extraordinary and are a cancer and blight upon the Federal Judiciary. In this case, we have a couple of rogue Judges making up the law as they go along and doing whatever they feel like doing. It is difficult to imagine a case where the abuses have been more widespread and rampant.

CONCLUSION

In conclusion, the Petitioner is becoming somewhat angered and frustrated by a legal process that appears to care more about the process than the underlying alleged wrong. A Judge should not exhibit a callous disregard for the very law that he is charged to uphold with the attitude that if the Petitioner doesn't like it, he can file an appeal. The Eleventh Circuit is difficult at best for a *pro se* party to perfect an appeal. Given this Petitioner's past history, it would appear that *pro se* briefs appear to be subject to “gatekeepers” and heightened scrutiny. The appeals process becomes even more difficult when the Petitioner is indigent. It couldn't be any clearer that Judge Graham and Defendants' counsel are not counting on the law to uphold their bad decisions and ill-gotten gains, but they are clinging to the hope that the appeals process will thwart the truth. The record without question supports the conclusion that Judge Graham has been reckless in usurping powers not awarded to him and derelict in his duty. The appeals process was not designed for the type of widespread and rampant judicial abuse as is present in this case(s). Petitioner should not be made to traverse the minefields of the Eleventh Circuit's appeals process for the intentionally bad behavior of Judge Graham.

FACTS UPON WHICH THE PETITIONER RELIES²

1. On 11/24/99, Mason filed a Motion for Preliminary Injunctive Relief. (DE #39). This motion was never acted upon by the district court. Petitioner made repeated filings with the trial court trying to ascertain why the court refused to rule on a lawful request for relief³.
2. 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).
3. 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), *See Exhibit A-3 attached hereto*. 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".
4. On 7/12/00, Defendants filed a *Defendants' 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.

² The Petitioner has deliberately shied away from a host of really bad decisions made the Court on the "merits." For example, the Magistrate Judge claims that Rule 36(a) requires the Petitioner to buy and pay for an official transcript in order for the defendants to admit or deny statements that they made on audiotape. (DE #523). Defendants, who are possession of audiotapes, have, in effect, successfully argued to the Court that they can not authenticate the sound of their own voices on audiotape. (DE #520);(DE #482).

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.

5. 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), *See Exhibit A-4 attached hereto*. 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.
6. Despite repeated filings from the Petitioner questioning the Court's authority to issue the Orders, (DE #201);(DE #246), orders which direct the Petitioner, a non-lawyer, to seek the permission of private for profit attorneys to communicate with the government or request records under the Florida Public Record Act or Chapter 119, Florida Statutes, the Court and the lawyers involved in this matter have not stated where the District Court derived the legal authority to issue these orders⁴.
7. During the course of this litigation, the District Judge has failed to do his lawful duty and conduct "de novo" reviews on the objections of the Petitioner to the Report and Recommendations of the Magistrate Judge on three separate occasions. (DE #336); (DE #351); (DE #408); (DE #435); (DE #466); (DE #766); (DE #791);
8. On June 20, 2001, the District Judge rendered a one and half-page order, that he called a "de

³ See also (DE #60);(DE # 66);(DE #80);(DE #88); (DE #93);(DE # 165);(DE #171);(DE #183);(DE #211);(DE #214);(DE #288);(DE #295);(DE #300);(DE #305);(DE #309);(DE #333);(DE #410); (DE #485);(DE #507);(DE #493);(DE #809)

⁴ See for example, (DE #60); (DE #66); (DE #80); (DE #88); (DE #93); (DE #160); (DE #164); (DE #165); (DE #171); (DE #183); (DE #187); (DE #211); (DE #214); (DE #219); (DE #288); (DE #295); (DE #300); (DE #305); (DE #309); (DE #306); (DE #333); (DE #343); (DE #410); (DE #414);(DE #507);(DE #573);(DE #668);(DE #706) (DE #810);(DE #813);DE #817).

novo” review and dismissed the Petitioner’s complaint. (DE #791); *See Exhibit A-5*. It took the District Judge exactly eight days from the time the Petitioner filed his objections to the Report And Recommendation of the Magistrate Judge to conduct a “de novo” review. Plaintiff’s complaint was dismissed because it alleged that the Plaintiff communicated with the government in violation of Court Orders, (DE #201);(DE #246). This order and so-called “de novo” review does not state one single fact or make one single recitation to law.

9. Graham is the only Judge in United States history to have dismissed a lawsuit simply because a nonlawyer private party exercised his constitutional right to communicate with the Government.
10. On June 20, 2001 when the district court dismiss this case, the District Judge has dozens of motions and appeals pending when he conducted his so-called one and half “de novo” review.

The following motions and appeals were pending on June 20, 2001:

Motion/Appeal	Date Filed	Motion/Appeal	Date Filed
438	11/29/00	667	4/18/01
439	11/29/00	703	5/07/01
440	11/29/00	709	5/10/01
441	11/29/00	710	5/10/01
518	3/5/01	711	5/10/01
544	3/12/01	712	5/10/01
561	3/16/01	714	5/10/01
563	3/18/01	715	5/10/01
607	3/28/01	716	5/10/01
632	4/4/01	724	5/11/01
660	4/13/01	726	5/16/01
693	4/30/01	741	5/21/01
694	5/1/01	742	5/21/01
702	5/7/01	749	5/23/01
723	5/11/01	NA	6/15/01
733	5/18/01	NA ⁵	6/18/01
734	5/18/01		

On June 20, 2001, the District Judge conducted his so-called one and half page ‘de novo’ review, he had some motions and appeals that had been pending for as long as 7 months.

10. On several occasions the Petitioner informed the Court that the Defendants’ attorney were attempting to make a fool of the Court by telling the district court that it had the authority to issue the orders, (DE #201);(DE #246), orders which direct the Petitioner, a non-lawyer, to seek the

⁵ “NA”, means not available to Plaintiff because the Plaintiff does not have access to Pacer to get the Docket Number.

permission of private attorneys to communicate with the government or request records under the Florida Public Record Act or Chapter 119, Florida Statutes, while at the same time the Defendants' counsel was telling this Court, Eleventh Circuit, that it was perfectly legal for the Petitioner to communicate with the government directly or *ex parte*. See (DE #868);(DE #829, Pages 4-5);(DE #817, Pages 4-5); (DE #813, Pages 2-3); *Plaintiff's Objections To R&R (DE #766) Dismissing Plaintiff's Complaint*, pages 6-7, filed on or about June 12, 2001.

11. As a direct result of the Graham's Court issue of the above referenced orders, (DE #201);(DE #246), orders which direct the Petitioner, a non-lawyer, to seek the permission of private for profit attorneys to communicate with the government, the Petitioner has filed suit against Graham[Case No. 01-14224-CV-Middlebrooks), Lynch and the Defendants' counsel for violating his First Amendment Rights.
12. Graham has been dishonest in that he has told this Petitioner that he may not state a claim against state actors under 42. U.S.C. § 1981 and these defendants while at the same time, in another case [Case No. 14094, St. Germian v. Highlands County Board of County Commissioners] that was before Graham, he allowed the Plaintiff to state a claim under 42. U.S.C. § 1981. It appears that Graham can do just about anything he wants to do.
13. Graham sat on several motions to proceed on appeal *in forma pauperis* for more than three months before he ruled on it. (DE #796, #799, # 811). Graham referred the motions to the Magistrate who made a decision to deny the motion on September 18, 2001, which had been originally submitted to Graham on or June 23, 2001. (DE #877).
14. The District Court has violated by the Petitioner's right of due of process by denying the efforts of this Petitioner to have audiotapes authenticated. Petitioner submitted some 25 audiotapes that were recorded during unemployment compensation hearings held by the State of Florida. (DE #214);(DE #219). Petitioner asked the Court to hold an evidentiary hearing (DE #739) so that the Petitioner could have the Defendants authenticate these tapes, the Court declined. (DE #746). Petitioner then filed *his Plaintiff's Motion To Transcribe Audiotapes And Tax Costs To the Defendants* on June 2, 2001. The Court never acted on this motion. Previously both the Court

and the Defendants had stated that the Petitioner must provide the Defendants with “official transcripts” in order for the defendants to authenticate the sound of their own voices on audiotape. (DE #532);(DE #520);(DE #482). The Court found ample time to hold an evidentiary hearing to attempt authentic irrelevant emails that supposedly depicts the Petitioner violating the court orders for the Petitioner not to communicate with his government.

15. Petitioner has properly moved for Graham to recuse himself, however Graham has adamantly declined. See (DE #'s 460, 533, 543, 560, 567, 611, and 638).
16. On September 20, 2001, Graham issued an order enjoining this Petitioner from filing anymore pleadings in his present actions⁶. (DE #878). This Order also enjoins the petitioner or his advocate from filing any further action in the Southern District of Florida. *See Exhibit A-1*, attached hereto. Defendants’ counsel is using this order prove matters in State Court actions.
17. The Defendants’ have a motion for attorney’s fees and costs pending. As a result of the court order (DE #878) prohibiting the Petitioner from making new filings, the Petitioner has been precluded from contesting this motion by pointing out frivolous and fraudulent charges he contests. The District Court and Defendants’ counsel are having *ex parte* communications. Defendants and their counsel are claiming they are the “prevailing party” because this lawsuit [99-14027] was dismissed on the “merits.” Defendants and their counsel believe that because Graham dismissed this action based upon the Petitioner’s alleged communication with the Government , they believe this was a decision on the “merits.”
18. On September 27, 2001, the Clerk of S.D. Fla. returned the Petitioner’s Notices of Appeals and

⁶ This order also precludes this Petitioner from maintaining his actions in Case Nos. 00-14201[currently on appeal, Case No. 00-16512], Case No. 00-14240 [Action filed by the Defendants], Case No. 01-14078, and 01-14230 [removed from state Court by defendants]. Graham added Case Nos. 00-14116, 00-14202, and 01-14074 for effect because these cases were never filed because no filing fee was ever paid as the Plaintiff simply got tired of waiting on Graham and took the actions to State Court where they are being litigated now.

in forma pauperis motions. The District Court has precluded the Petitioner from filing Notices of Appeal.

OTHER RELATED CASES

19. In Case No. 00-14201, Graham sat on a motion to proceed *in forma pauperis* for over four months before he decided to rule on it. . (DE #2); (DE #9).
20. In Case No. 01-14078-CV-DLG, the District Judge, Donald L. Graham, sit on motion to proceed *in forma pauperis* for a whopping six months before he decided to rule on it. (DE #2), filed 3-12-01;(DE #8), denied 9-18-2001.
21. In Case No.14240-CV-Graham, an action filed against the Petitioner by the Defendants in this matter, the District Judge took almost 7 months to rule on this Petitioners motion for leave to amend to add a claim on cross complaint for malicious prosecution. (DE #36, 2/26/01);(DE #51, 9-18-2001).
22. In Case No.14240-CV-Graham, Graham denied this Petitioner's motion to tax costs (DE #30, 1/23/01). Given that this Petitioner was the prevailing party and the law as set forth in Rule 54, Fed.R.Civ.P. and this Court's decision in Chapman v. AI Transport, 229 F.3d 1012, 1039-40 (11th Cir. 2000)(holding that the district judge must set forth a reason for denying the prevailing party costs), the Petitioner filed a motion for clarification to ascertain the reason for the court's denial. The District Judge opted not to reply and closed the case.
23. Petitioner has not filed one single lawsuit that could be adjudged by the Southern District Of Florida to be frivolous.
24. With the exception of this case or Case No. 99-14027-CV-Graham and 01-14230-CV-Graham⁷, all of the other actions filed by this Petitioner were dismissed without prejudice because the Petitioner did not have the filing fee to pay. Indeed the Petitioner voluntarily withdrew actions from the S.D. Fla. because Graham took months to rule on *in forma pauperis* motions. Rather

⁷ 01-14230-CV-Graham, Petitioner originally filed this action in the State Court, 10th Judicial Circuit, State of Florida, however the defendants removed this action to the S.D. Florida where they knew it would be

than wait months on Graham, Petitioner filed his actions in State Court.

25. In Case No. 01-14230, Graham granted the defendants a summary judgment without ruling on five motions that were pending that would affected the summary judgment. Graham completely ignored the following motions: (1)*Plaintiff's Motion To Compel Defendant's Answers to Plaintiff's First Interrogatory For Carl Cool*, (2)*Plaintiff's Motion For Default Summary Judgment*, (3)*Plaintiff's Motion For Summary Judgment, Statement of Undisputed Material Facts and Supporting Memorandum of Law*, (4)*Plaintiff's Motion To Strike Affirmative Defenses, Or In The Alternative, Plaintiff's Motion For A More Definite Statement*, and (5)*Plaintiff's Motion To Strike Portions Of Defendants' Summary Judgment Motion*.
26. In Case No. 01-14230, Graham dismissed this case because he said it was subject to the defense of *res judicata* because he claimed the exact same issues had been litigated in Case No. 99-14027-CV-Graham. This decision was based upon a R&R by the Magistrate issued on November 22, 2000 (Case No. 99-14027-CV-Graham, DE #435⁸), ratified by a one and half page 'de novo' review by Graham on 2-13-01 (Case No. 99-14027-CV-Graham, DE #466). As was Plaintiff's right pursuant to Rule 59, Fed.R.Civ.P and Rule 60(b), Fed.R.Civ.P., Petitioner filed a motion for clarification simply asking the Court how could the claims in the second suit (Case No. 01-14230) which arose subsequent to the R&R of November 22, 2000 be subject to the doctrine of *res judicata*. Rather than answer this simply inquiry, the District Judge close the case and ignored the motion.

assigned to Donald L. Graham under the Local Rules, Graham is known to be hostile to this Petitioner's causes.

⁸ Petitioner, among other things, brought several claims under 42 U.S.C. § 1983 for deprivation of Plaintiff's right of equal protection, due process of law, and First Amendment. Incidentally, At page 4 of the R&R (DE# 435), on the very first time the Magistrate passes on these claims he dismisses them with prejudice because "[t]he Plaintiff's allegations set forth in his fourth Amended Complaint do not establish or even state a claim for racial animus" Petitioner does not want the argue the point here, but merely illustrate the sloppiness and capriciousness for which Graham's Court handles matters, however a "racial animus" is not necessary to state a claim for deprivations of equal protection, due process of law, and First Amendment. These claims were based on the Defendants, all Caucasians, issuing the Plaintiff, a proud black man, four successive "No Trespass Warnings" barring the Plaintiff from using the Sebring Public Library, a publicly owned facility. These "No Trespass Warnings" were issued on or about, December 1, 1998, June 30, 1999, December 31, 1999. The "No Trespass Warnings" were not rescinded until July 31, 2001 or eight (8) months after the R&R of November 22, 2000. *Res Judicata* would be impossible between November 23, 2000 and July 31, 2001.

27. Donald L. Graham, District Judge, and Frank Lynch, Jr. are fully aware that the Petitioner attempted to file a complaint against them pursuant to 28 U.S.C. § 372(c), because the Petitioner mistakenly filed a complaint with Senior Judge of the Southern District Of Florida rather than the Chief Judge of the Eleventh Circuit. Chief Judge Zloch sent Donald L. Graham a copy of the complaint the Petitioner filed with him. See Exhibit A-2, attached hereto.

SALIENT, REVEALING, AND PERTINENT FACTS

1. It took the District Judge an incredible and lightning fast eight (8) days from the time Petitioner mailed his Objections, June 12, 2001, to the Magistrate Judge's Report and Recommendation to the District Court, rendered on May 31, 2001 (DE 766), to complete and render a one and half-page "de novo" review on June 20, 2001. These eight days include two days U.S. Mail delivery time from Sebring, Florida to Fort Pierce, FL plus the time it took for the clerk in Fort Pierce, FL to forward the Petitioner's objections to the District Judge in Miami, Florida. (DE 791). In all reality, Graham was able to conduct a "de novo" review in only five days.

ISSUE ARGUMENTS CLOSING THE DOORS TO THE COURTHOUSE

I. The district judge has grossly abused his discretion by imposing severe restrictions on how the Plaintiff exercises his right to access the Courts. (DE 878). See Exhibit A-1, attached hereto.

Discussion

The District Court's decision is unsupported by the facts. The District Court's decision is supported by unauthenticated emails that are unrelated to the merits of any case. Petitioner's has consistently denied authoring these emails, in fact, Petitioner has specifically informed the Court that

the Defendants and their counsel were fabricating email and attributing them to this Petitioner. (DE #167)⁹. However, the Court declined to do anything about it. The Court, used its “inherent” or “mystical” powers and authenticated them anyway. (DE # 174). The District Court, or Donald L. Graham, supports his decision with quotations from unauthenticated and fabricated email like:

- 1) "Anybody who supports your position on this matter is a racist and is part of the problem. I fear no man!! This includes white men wearing robes.";
- 2) "You don't have enough Insurance and smart lawyers to outrun the law and defeat rne.";
- 3) "I ain't going to have a handful of white bigots run over me.";
- 4) "Now go call your daddy in Fort Pierce and see if he can get you out of this mess.
- 5) ". the hell I would give them, hell like you are getting ain't going to be bully by no racist white man." (Case Number 99-14027,D.E. #646).

Assuming, *arguendo*, that this Petitioner actually made these statements, such statements would hardly justify “closing the courthouse doors” to the Petitioner. Contrary to Donald L. Graham’s apparent dismay and unhappiness, federal judges are not above harsh and even unfair criticism by a free American citizenry. “[A] judge may not hold in contempt one “who ventures to publish anything that tends to make him unpopular or to belittle him. The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil. But the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.” Craig v. Harney, 331 U.S. 367, 376 (1947). The mere fact that Donald L. Graham’s personal feelings maybe hurt is immaterial. If Graham can’t stand the heat then he should get out of the kitchen.

The Court next bases its’ decision on the Petitioners’ so-called “vexatious and relentless litigation.” The district court’s decision is supported by mere conclusory allegations. The district court does not even attempt to support this bald-faced, mere conclusory allegation with facts or references to the record. Petitioner freely admits that he has filed multiple lawsuits against these intransigent and tortious defendants, however, the quantity of lawsuits is not the question. The quality of the lawsuits is the only significant point of inquiry. Were these lawsuits baseless? Did

⁹ See also (DE #661, Exhibit B, Attached thereto, page 2, ¶6);(DE #803);

they have merit or were they frivolous? Graham does not consider the fact that the defendants could be involved in “vexatious and relentless” tortious behavior. Instead Graham has freely chosen to believe that because the Petitioner has filed more than one or “x¹⁰” amount of lawsuits, then the Petitioner must be involved in “vexatious and relentless litigation.” The record does not support the conclusion that the Plaintiff has filed any frivolous lawsuits. Which of the Petitioner’s actions were frivolous and why? Petitioner’s stands by any lawsuit he has filed and welcomes scrutiny. Graham’s theory, or “Graham’s Law,” drawn to its logical conclusion evinces an absurd and utterly preposterous result. If the Court were to apply “Graham’s Law,” then a new defense would be created, or “Graham’s Defense,” if you will. “Graham’s Defense” would protect potential defendants and tortfeasors from being sued in the future by the same plaintiff because “x” amount of lawsuits have been filed against them by the same plaintiff already. Stated alternatively, defendants could then intentionally engage in illegal, vexatious, and tortious behavior against the same plaintiff because the same plaintiff already has “x” amount of lawsuits against them already. Surely, this was not Congress’s or any legislature’s intention. In the vernacular of the “bruthas” on the street, Graham is just “running his mouth,” with no proof of anything. Graham’s actions were simply childish and immature. It is “put up or shut up” time.

Graham also states that the Petitioner is “guilty” of “continual attempts to directly communicate with the Defendants rather their attorneys, the Court enjoined Mason from any further contact with the Defendants or Defendants’ employees.” As pointed out, infra, the Court simply does not have the legal authority to Court enjoin “Mason from any further contact with the Defendants or Defendants’ employees.” More importantly, the “Court” has not even attempted to explain where it gets the authority from to make such an order. Perhaps Graham could grace this Court with an explanation or a source of this mystical authority. Petitioner is under no legal obligation to merely accept on faith that Graham has the legal authority to issue any order. The mere fact that Graham refuses to disclose the source of his authority to issue such an order is revealing in and of itself.

¹⁰ Plaintiff has no clue what “X” amount of lawsuits equates to as Donald L. Graham was not gracious enough to share this information with the Court.

Graham's behavior in issuing this permanent injunction was reckless and irresponsible. The mere fact that Graham does not want to answer reasonable inquiries about the rulings he makes, or mostly in this case, does not make, is not dispositive or significant. Graham is trying to cover his "bacon" because he is now aware that he is being called upon to explain his lawless behavior. Graham's written decision is little more than propaganda and not a legal memorandum. If Graham is forced to be specific as parties to a lawsuit are required to do, rather than making mere generalizations and bald-faced conclusions, then this Petitioner will systematically and methodically destroy any legal argument Graham makes because Graham's decision was strictly arbitrary. However, Graham is severely handicapped because the record simply does not support his behavior and "snap" decisions. If Graham wants the "close the door to the courthouse," to the Petitioner, then the burden is on him to prove it is justified. Petitioner does not have to prove he has a right of access.

PICK AND CHOOSE JURISPRUDENCE

II. The district judge has violated the Code of Conduct for Federal Judges.

Discussion

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(5) A judge should dispose promptly of the business of the court.

Canon 3(A), Code Of Conduct For United States Judges.

(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

(5) A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

Canon 3(B), Code Of Conduct For United States Judges.

The District Court has willfully and blatantly failed in his duty to handle the business of his Court in a timely manner. The district court has literally ignored scores of filings and has taken no action on these filings while unlawfully disposing of the case. The District Judge has failed to conduct proper "de novo" reviews under the law when required. Decisions on important matters before the district court's rulings have been untimely. The truth of the matter is that has exercised his "dissection" to do whatever he wants to do.

POWER BY USURPTION AND FIAT

III. The district courts' issuance of a "pretrial discovery issue and not an injunction" per se is patently illegal and constituted a naked and aggressive act of usurpation.

Discussion

The district court has acted in clear absence of subject matter jurisdiction. The Petitioner's out of court behavior was none of the District Court's business. "Judge 101's" first lesson is to establish jurisdiction. "Courts created by statute only have such jurisdiction as the statute confers. The rule that a court may not in any case, even in the interest of justice, extend its jurisdiction where none exists has always worked injustice in particular cases..." Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 820 (1988). 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)(citing Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 368-370 & n. 7, 98 S.Ct. 2396, 2400 & n. 7, 57 L.Ed.2d 274 (1978)). "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)¹¹. .. The only explanations the Petitioner has received thus far are the following:1)"this court is considering this motion as a pretrial discovery issue and not an injunction per se" (DE #201);(DE #246);2)"The Plaintiff alludes to this Court's rulings, issued on June 19 and July 25, 2000. Directing that he should not contact any of the Defendants or individual Defendants, including their supervisory employees, regarding any matter related to this case except through their counsel of record. If the Plaintiff was represented, his attorney would know that this is proper procedure." R&R, (DE #766) at page 3. The Magistrate fails to realize that the Federal Rules of Civil Procedure are irrelevant if the court

¹¹ "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).

lacks subject matter jurisdiction. The Magistrate is putting the horse before the cart in that the matters at issue should not even get to the Federal Rules of Civil Procedure because this court is without subject matter jurisdiction.

Petitioner is well within his 1st Amendment rights to petition the government, civil lawsuit notwithstanding. The 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.

No where in the First Amendment does it say that a citizen must request the permission or notify a private for profit attorney before he communicates with the government. Petitioner 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 enjoy. 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 pertinent comments to Rule 4-4.2, R. Regulating Fla. Bar 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.
§ 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 be hereto) 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.
"[T]here is nothing that prohibits one party to a litigation from making direct contact with another party to the same litigation. (internal citations omitted). 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). There is an abundance of other courts who have heard this same issue and reached the exact same conclusion, or that private

parties may communicate with the government lawsuit notwithstanding¹². "The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms. The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972).

The Federal Courts have no jurisdiction under Chapter 119 of the Florida Statutes to regulate how Florida Public Records are accessed. Moreover, Petitioner has a statutory and constitutional right to public records under Florida Law. "It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person." § 119.01, Fla.Stat. Article 1, Section 24(a), Florida Constitution states:

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

"[T]he standing of one who seeks access to records under the Freedom of Information Law is as a member of the public, and is neither enhanced nor restricted because he is also a litigant or potential litigant." In Re Mims, 722 N.Y.S.2d 30; 2001 N.Y. App. Div. LEXIS 2466, (N.Y. S.C., Appellate Division, 1st Part 2001). "[P]arties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. 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." Reynoso v. Greynolds Park Manor, Inc., 659 So.2d 1156, 1160 (Fla.App. 3 Dist. 1995). The government has a "duty to advance the public's interest in achieving justice, an ultimate obligation that outweighs its narrower interest in prevailing in a lawsuit." Frey v. Dept. of Health & Human Services, 106 F.R.D. 32, 37 (E.D.N.Y. 1985). "Private citizens have a constitutional right of access to government, including government officials. Any interest a government agency might have in being protected from statements made by its employees is outweighed by the First Amendment interests of private parties to "petition for redress" and of the agency's own employees. Vega v. Bloomsburgh, 427 F. Supp. 593, 595 (D. Mass. 1977). See also American Canoe Ass'n Inc. v. City of St. Albans, 18 F.Supp. 2d 620 (S.D.W.Va. 1998); Holdren v. General Motors Corp., 13 F. Supp. 2d 1192 (D.Kan. 1998); Loatman v. Summit Bank, 174 F.R.D. 592, (D.N.J. 1997); U.S. v. Ward, 895 F.Supp. 1000, (N.D. Ill. 1995); Miano v. AC & R Advertising, Inc., 148 F.R.D. 68; Tucker v. Norfolk & Western Ry. Co., 849 F.Supp.1096,1098 (E.D.Pa.1994); Pinsky v. Statewide Grievance Committee, 578 A.2d 1075,1079 (Conn. 1990); 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); Washington State Bar Association, [URL:<http://www.wsba.org/barnews/2000/02/ethics.htm>];¹²

or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The fact that the Government is being sued and could be at a “disadvantage” does not relieve these government defendants of their statutory and constitutional obligations to allow inspections of public records. A misguided federal judge simply does not have the legal authority to “fix” this perceived disadvantage. 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.”

There is no law compelling the Petitioner to request the permission of a private for profit attorney’s permission to communicate with the Government. Any such notion is not only inane, but also totally preposterous. The district court has acted in a capacity as a legislator. The District court has made what is expressly legal under the Constitutions of the United States and of the State Florida and statutory provisions under both federal and state law illegal by fiat. The District Judge made up his own law. After making his own law, the District Judge then turned into law enforcement and a prosecuting attorney. The district court has usurped the authority of law enforcement. The district court has acted as a prosecuting attorney. The district court’s decision was childish and petulant in that District Judge was “unhappy” because the Petitioner told him that he would not comply with an illegal order that patently violates the Plaintiff’s statutory and constitutional rights. Who died and made Donald L. Graham King?

DISQUALIFICATION IS IMPERATIVE

- IV. The District Judge should be disqualified from presiding over any matter in which this Petitioner is a party.

Discussion

The District Judge has so badly mismanaged this Petitioner's causes such that a reasonable person would have extreme difficulty in not harboring significant doubt about the judge's impartiality. As fully set above, the District Judge has refused to rule on literally scores of pleadings that were presented to him. The District Judge has openly defied the law he is sworn to uphold by knowingly and willfully making Orders that he knows are patently illegal and constitutes usurpation. See *Exhibits A-3 and A-4*.

The District Judge has already formed an opinion about the Plaintiff's causes that is not based upon the evidence. In the District Judge's Order dated September 20, 2001 at Pages 3 and 4, the District Judge concludes that the Petitioner's actions are "vexatious and relentless" without any reference as to whether any individual lawsuit had merit. *Exhibit A-1, attached hereto*. As it readily apparent from the order, this decision is based solely on unauthenticated, irrelevant, and fabricated email and the number of lawsuits the Plaintiff has filed. The District Judge does not state which lawsuit lacked merit and why. Instead, the District Judge just asks the Court and the Petitioner to take his word for it.

The District Judge is now legally locked into a bad position because he is being sued for issuing the orders, (Case No. 99-14027, DE #201, DE #246), stating that the Petitioner must contact private for profit attorneys and seek there permission in order to communicate with the government. There is no possible way that the District Judge can now say that he acted without legal authority because to do so would be admitting guilt in case where is being sued, Case No. 01-14224-CV-Middlebrooks for issuing these patently illegal orders.

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. Pursuant to Rule 21(b)(4), FRAP, Petitioner requests that that his Court invite or order the trial court judge to address the petition. The trial court and defendants' counsels are largely responsible for making this mess, it seems only fair that they should answer. Invite the American Civil Liberties Union, "ACLU", *amicus curiae*.
2. Issue an Order permanently enjoining Donald L. Graham or Frank Lynch, Jr. from ever presiding over any matter to which Marcellus M. Mason, Jr. is party to in any Court within the Eleventh Circuit Of Appeals.
3. Vacate and render void any Order of the district court enjoining the Petitioner communicating with the government defendants in this matter for all time.
4. Vacate any and all orders requiring the Plaintiff to seek the permission of Donald L. Graham to maintain his present lawsuits or to file a new lawsuit. Or stately alternatively, Petitioner is requesting that this Court Vacate the Order of September 20, 2001. *See Exhibit A-1 attached hereto.*
5. Transfer the following cases to another Judge within the Southern District of Florida and have that Judge "reopen" the cases and render decisions on all matters that were pending prior to the "closing" of the cases: Cases Nos. 01-14230, 01-14078, 00-14240, 00-14201, and 99-14027.
6. 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 29th day of September, 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.

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 September 29, 2001, to: Allen, Norton & Blue, 324 South Hyde Park Avenue, Suite 350, Tampa, Florida, 33606.

APPENDIX

EXHIBIT NO.	DOCKET ENTRY NUMBER	NATURE OF ORDER
A-1	878	Order dated 9-20-2001 enjoining plaintiff from maintaining present actions or any new action
A-2	NA	Letter dated 8-10-2001 from Judge Zloch
A-3	201	Order dated 6-19-2000 granting defendants a preliminary injunction
A-4	246	Order dated 6-19-2000 granting defendants a "renewed" preliminary injunction
A-5	791	Order dated 6-20-2001, "de novo" review, dismissing the case