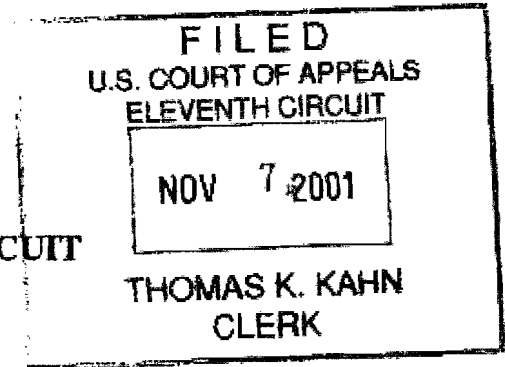


CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Miscellaneous No. 01-0054




**IN THE MATTER OF A COMPLAINT FILED BY MARCELLUS M. MASON,
JR.**

IN RE: The complaint of Marcellus M. Mason, Jr., against Donald L. Graham, United States District Judge for the United States District Court for the Southern District of Florida under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c).

ORDER

Marcellus M. Mason, Jr. filed this complaint against United States District Judge Donald L. Graham, pursuant to Title 28 U.S.C. § 372(c) and Addendum Three to the Rules of the Judicial Council of the Eleventh Circuit.

The allegations of the Complaint are "directly related to the merits of a decision or procedural ruling" and/or "Action on the complaint is no longer necessary because of intervening events, and therefore moot". Consequently, pursuant to 28 U.S.C. § 372(c)(3)(A) and (3)(B) and Addendum Three Rule 4 (a)(2), this Complaint is **DISMISSED**.



Chief Judge

RE: Case No.01-14078, Case No.0014240, Case No.00-14201, and Case No.99-14027
Judge Complained Of: Donald L. Graham

Honorable Chief Judge:

Background Information. Donald L. Graham has been assigned to handle all the cases I am involved in except one, 01-14224, where his being sued for his bad behavior

It is my contention that Graham has badly mishandled my cases. The behavior of Graham has not been in accord with the Code of Conduct For United States Judges. My complaint is largely that the Graham has refused to consider and has ignored my flings and pleadings and have taken no action. Additionally, I am also troubled by the fact that I have asked for explanations regarding a couple of matters and have not received any. I am also concerned that Graham exceeded his judicial authority. In support of this complaint, I state the following::

"A Judge Should Perform the Duties of the Office Impartially and Diligently." *Canon 3 Code Of Conduct For United States Judges. Canon 3 Code Of Conduct For United States Judges.*

Case No.01-14078. The complaint in this lawsuit was filed on or about 3/12/01. (DE #1). A motion to proceed in forma pauperis was filed on 3/12/01. (DE #2). I also filed a mortgage statement at the time which demonstrated that my mortgage was in arrears. (DE #3). I also filed a PLAINTIFF'S MOTION FOR A RULING ON HIS IN FORMA PAUPERIS MOTION¹ on or about July 10,2001. On or about August 6,2001, I filed a PLAINTIFF'S SECOND MOTION FOR A RULING ON HIS IN FORMA PAUPERIS MOTION. To date, Judge Graham has taken more than six months to rule on a simple motion to proceed in forma paupers. Judge Graham does not have the legal authority to sit on motions and not do anything. Graham's duty is to either grant or deny the motion. Graham is quite certain that given my history that I will appeal any denial of in forma pauperis motion because I have done so when he denied me once before without any explanation. *See Eleventh Circuit Case No. 00-16512-B.*

Case No.00-14240, Heartland Library Cooperative, et.al. v. Marcellus M. Mason, Jr. . This lawsuit was filed on or about August 7, 2000. (DE #1). On 2/13/01, the court dismissed this frivolous lawsuit. (DE #33);(DE #27). I filed a motion for leave to amend to add claim for malicious prosecution on 1/8/01. (DE #5). This motion was denied without prejudice. (DE #26). I have subsequently filed other motions for leave to amend to add a cross-claim for malicious prosecution. (DE#36). On or about May 18,2001, I filed a Defendant's/Cross Plaintiffs Renewed Motion for Clarification And Motion For Leave to Amend. On or about July 9, 2001, I filed a Defendant's/Cross Plaintiff's Third Motion For Leave to Amend. As of this date, September 14, 2001, Judge Graham has refused to respond to any of motions for leave to amend. It should not take over seven months to rule on a motion for leave to amend In this same case after the court dismissed the plaintiff's single claim, I filed a motion for taxation of costs which was promptly denied without any explanation from Judge Graham. (DE #5 30:31:32:35). Upon denial of my motion for taxation of costs, I filed a notice of appeal and a

¹ All of my financial affidavits show the following: I was and still unemployed. I have a home mortgage of \$458.00 a month. I have and had a car payment of \$332.00 a month. The car has since been repossessed, but I still have the \$332.000 month payment. I have light bills that exceed \$100.00 a month. I had a telephone bill that averaged between \$50-\$100. I have water bills that average between \$30-\$70.00 a month. I have been unemployed since September 1999. My wife has a gross income of \$618.00 a month. Any reasonable person would realize that I have no money to pay court filing fees. My financial condition is well documented and beyond the requirements of the Southern District of Florida.

motion to proceed in forma pauperis [11th Circuit Case No.01-11153-C. (DE #37);(DE #41). The motion to proceed on appeal in forma pauperis was filed on March 15, 2001. As of April 19, 2001 or more than a month later, Judge Graham had not ruled on my motion to proceed in forma pauperis. I received a letter from a clerk [dated April 19, 2001] from the 11th Circuit inquiring about the motion to proceed in forma pauperis filed with the district court or Judge Graham. On or about April 24, 2001, I immediately copied this letter and attached it to a Defendant's Motion For Clarification On Plaintiff's Motion To Proceed On Appeal In Forma Pauperis. On April 30, 2001, after receiving the inquiry from the 11th Circuit, Judge Graham decided to deny my motion to proceed on appeal in forma pauperis. (DE #43). It should not take over 1 ½ months to rule on a simple motion to proceed in forma pauperis. Once Graham received my motion for clarification that was filed on April 24, 2001 that had a copy of the letter of April 19, 2001 from a clerk in the Eleventh Circuit attached to it, he made the decision to deny the motion in only 6 days. Graham could have made a decision without the pressure of the Eleventh Circuit in the more than one month he had been sitting on my motion to proceed in forma pauperis. In his order of April 30, 2001, Graham states, "Defendant Marcellus M. Mason, Jr. has several cases pending in the Court in which his various motions to proceed in forma pauperis have repeatedly be denied. As Defendant is well- aware, the Court has already determined that he does qualify to proceed without the payment of fees." It may well be that Graham has already predetermined that he will deny any in forma pauperis motion made by me, but the Eleventh Circuit rules require that I submit the motion to Graham even though his ultimate denial is a fait accompli. It should not take Graham two months to deny, in this case, or grant a motion to proceed on appeal especially when Graham has already decided he is going to deny any motion to proceed in forma pauperis that I make. My complaint is that Graham is required to act promptly even if he intends to jerk me around. I should not have to wait 2 months on Graham to decide to deny a motion to proceed in forma pauperis, especially when he freely admits that he is going to deny the motion. Graham should make his pre-determined denial immediately so that I can file my motion to proceed in forma pauperis with the 11th Circuit so that I can move my case along. Plaintiff submits that Graham takes a long amount of time to rule my motions to proceed in forma pauperis because he is now trapped into a bad decision he made in another case to deny me in forma pauperis. In Case No.00-14201, Graham denied my in forma pauperis motion, but the Eleventh Circuit, looking at the exact same information as Graham granted me the right to proceed in forma pauperis, Graham is fully cognizant of this fact. This case is now appeal docketed under Case No. 00-16512-B. Graham is going to deny or grant a motion, but he has absolutely no right to sit on a motion and not decide with the hope that the motion will somehow go away.

Case No.00-14201, Marcellus M. Mason, Jr. V. Highlands County Board of County Commissioners, Eleventh Circuit Case No. 00-16512-B. This case was filed on July 3, 2000. (DE #1). A motion to proceed in forma pauperis was filed on July 3, 2000. (DE #2). This motion languished in the court and was not ruled on until November 21, 2000 or over four months after it was filed. Judge Graham's refusal to timely rule on this matter caused some confusion in this case. I filed yet a second motion to proceed in forma pauperis on November 8 2000. (DE #11). Both motions to proceed in forma pauperis were denied. (DE #12);(DE #13). On November 30, 2000, I filed a notice of appeal. (DE #14). As required by the rules, I filed a motion to proceed on appeal with Judge Graham on 12/19/00. (DE #16). Rather than Judge Graham ruling on the motion, he referred the motion to Magistrate Judge Lynch. (DE #18). Judge Lynch subsequently denied my motion to proceed in forma pauperis on appeal. (DE #20). I then filed an appeal with Judge Graham who subsequently denied my appeal. (DE #21);(DE #22). I filed an appeal of the with the Eleventh Circuit and motion to proceed in forma pauperis. The Eleventh Circuit looking at the exact same financial information allowed me to proceed on appeal in forma pauperis. This case is now on appeal bearing 11th Cir. Case No. 00-16512-B. My complaint is NOT with the denial of in forma pauperis motion, but with the length of time Graham is taking to render a bad decision. Apparently, Graham has every right

to make foolish and vindictive decisions, but he has no right to sit on a motion for over four months and do absolutely nothing. I am simply not going to stand for these kind of shenanigans.

Case No.99-14027. This case is the biggest travesty and miscarriage of justice. On November 24, 1999, I filed a motion for a preliminary injunction pursuant to Title VII. (DE # 39). In almost two years, Judge Graham has not ruled on this motion. I have made repeated motions and filings with Judge Graham to figure out why he refused to rule on my motion for a preliminary injunction. 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). Judge Graham does not have the right to deny a Congressionally mandated form of relief by sitting on his but and not doing anything. Judge Graham has denied my right to relief, not on the merits, but on his unwillingness to rule on a motion. There is absolutely no reason why Graham should not have ruled on my motion for a preliminary injunction. Essentially, Graham has denied me a lawful remedy, not on the merits of a lawful decision, but I have been denied by malfeasance. I have repeatedly asked for explanations as to why my motion for a preliminary injunction was never ruled on, but Graham has stubbornly refused to respond and provide me any kind of explanation as to why he refused to rule on my motion for a preliminary injunction. This kind of behavior is unacceptable and simply will not be tolerated. Graham took away my hope and dreams of equitable remedy by simply by doing nothing.

To further add salt into my wound, Graham's Court granted the defendants' motions for "preliminary injunctions." (DE #199) (DE #231); (DE #201);(DE #246). These orders, (DE #201);(DE #246) were issued on June 19, 2000 and July 25, 2000. It took the court exactly (DE #199) (DE #231) exactly 6 and 13 days, respectively, to grant the defendants' motions for preliminary injunctions or "*a pretial discovery issue and not an injunction per se*". Plaintiff's motion for a preliminary injunction had been pending since November 24, 1999, but the Court had made no ruling. The defendants' counsel asked the Court to issue injunctions to stop me, a non-lawyer, from communicating with the government defendants in this matter without seeking the permission of their private attorneys, Allen, Norton & Blue, who live in Tampa, Florida, or 100 miles away from Sebring, Florida where I live. The defendants through counsel also asked the court to issue an injunction requiring me to submit my Florida Public Records request to their Private Attorneys before submitting them to the government defendants directly. I have a First Amendment right to petition the government and I am not required to seek a private attorney's permission to speak with or petition the government about any subject I feel like, lawsuit notwithstanding. I have a Florida Constitutional right and a statutory right to public records. I am never required to seek the permission of a federal judge to petition the government or make public records request under the laws of Florida. It is none of Graham's business what my out of court behavior is. I do not need, want, or seek the approval of Graham of my out court behavior. I have every right to say whatever I want to the government defendants in this matter with or without the approval of private attorneys or a federal judge. My rights are no less or greater than any non-litigant citizen. It was not a judicial act, nor was Graham acting in a judicial capacity and Graham's action was in clear absence of jurisdiction. I cited legal authorities to Graham that concluded that the court's orders of June 19, 2000 and July 25, 2000, (DE 201);(DE #246), are not just "clear error," but "dead wrong" i.e. *Restatement of the Law (Third) The Law Governing Lawyers*, ~99. Cmt. K., pg. 76; *Florida Bar Rule 4-4.2*. Graham does not state why he alone appears to have more insight than every other legal authority to handle this type of issue. Instead he patronizes me by saying, "If the Plaintiff was represented, his attorney would know that this is proper procedure." (DE #766, Page 3). I have repeatedly asked Graham where he gets the legal authority from to issue orders telling me how I have to speak to the government defendants in this matter or dictating to me how I access

public records, however they have failed to cite any legal authority for their patently illegal behavior. See (DE #200); (DE # 239); (DE #264); (DE #262); (DE #284); (DE #334); (DE # 509); (DE # 515); (DE # 526); (DE #633) and the court's orders: (DE # 279);(DE #407); (DE # 514);(DE # 524);(DE #634). As a matter of fact, the defendants counsel even knows these orders, (DE #'5 201:246) are illegal because they have told the Eleventh Circuit Court of Appeal as much. "Admittedly, The Court in McDonnell Douglas held that there is nothing that prohibits one party to a litigation from making direct contact with another party to the litigation. It is based its rationale on the fact that Rule 4.2 of the Professional Rules of Responsibility is designed to regulate the conduct of lawyers, not non-lawyers." See *11th Circwt Case No.01-11850, Appellees' Response Th Opposition To Appellant's Emergency Motion ForA Stay Pending Pending Review, Page 8*). In other words, defendants' counsel tells the district court one thing and the Eleventh Circuit another. See *PLAINTIFF'S OBJECTIONS TO R&R (DE #766) DISMISSING PLAINTIFF'S COMPLAINT page 6, flIed on or about June 12, 2001*. I have told Graham of the trickery and chicanery the defendants' counsel has perpetrated on the Court, but they have failed to do anything. I have repeatedly asked Graham and Lynch where they get the legal authority or subject matter jurisdiction to tell me when and I how I can communicate with the government. I have asked them where they get the legal authority from to tell me how I can access Public Records under Florida Law. To date, Graham has refused to state in writing where he gets the legal authority from to take these actions. This is unacceptable, I demand an explanation of legal authority. Graham has had since June 2000 to answer the question of legal authority and subject matter jurisdiction, but he has utterly failed to do so. It is not unreasonable for a party to ask a Judge the simple question of by what legal authority do you act? I demand an answer. As a result of his behavior I have given Graham a Lawsuit for recklessly violating my First Amendment Rights.

My lawsuit was dismissed pursuant to two motions for sanctions in the form of dismissal submitted by the defendants. (DE #51 1);(DE #646). The dismissal was based on the illegal orders referenced above. (DE #201);(DE #246). The Magistrate Judge wrote a purely conclusory Report and Recommendation recommending dismissal of my lawsuit, which was adopted by Graham². (DE #766); (DE #791). I vigorously opposed the R&R. See *PLAINTIFF'S OBJECTIONS TO R&R (DE #766) DISMISSING PLAINTIFF'S COMPLAINT*. Graham claims he did a "de novo~ review, but he followed his usual practice of making mere conclusory statements with no recitation to law or facts. (DE #766). Graham wrote a one and half page "de novo" review. I want somebody to provide me with an explanation of how a Judge can dismiss a complaint based on two illegal orders, (DE #201);(DE #246). Again, these orders, attempt to dictate to me, a non-lawyer, the terms under which I may communicate with the government and request Public Records under Florida Law. I want Graham to tell me where he got the legal authority from render such orders, in fact, I demand this information, forthwith.

Graham has sat on my motions and appeals for months without doing anything. It is kind of funny, but it took Graham eight days (mail time included) from the time I mailed my objections to the Magistrate's Report and Recommendation (DE #766) to the Court on June 12, 2001 to the time he purported conducted a 1 ~A page mere conclusory de novo review on June 20, 2001 (DE #791) to dismiss my lawsuit. Graham acted with great dispatch, six days, to illegally dismiss my lawsuit, however he was in possession of numerous appeals that had been pending for months that he had failed to rule on. On June 12, 2001, Graham had not ruled on the following motions and appeals I had submitted:

Appeals ³	Date Filed	Motions	Date Filed
438	11/29/00	667	4/18/01
439	11/29/00	703	5/07/01

I have filed a lawsuit against Graham and Lynch for violating my First Amendment Rights. See Case No.01-14224, Southern District of Florida.

3 These are appeals filed with the District Judge that were not acted on.

		4	
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 ⁴	6/18/01
734	5/18/01	NA	6-18-01
		NA	6-2-01
		NA	6-2-01

I will need an explanation why Graham utterly failed to rule on my motions and appeals and why he had time to illegally dismiss my complaint in just six days where claims he conducted a "de novo" review, but had no time to rule on motions and appeals that had been pending for months. Either Graham is going to do his job or he isn't. I demand an explanation.

On three separate occasions Graham has failed to do his duty and conduct a "de novo" review. (DE #336); (DE #351); (DE #408); (DE #435); (DE #436); (DE #466); (DE #766); (DE #791).

This case [99-14027) has been sloppily managed or mismanaged to my detriment I filed a motion to disqualify along with several supplements to lay out how badly managed this case has been mismanaged. See DE #5 460, 533, 543, 560, 567, 611 and 638. See also PLAINTIFF'S THIRD MOTION TO DISQUALIFY AND PLAINTIFF'S OBJECTIONS TO COURT ORDER DENYING PLAINTIFF'S MOTION FOR CLARIFICATION filed on or about April 11, 2001. Ultimately, Graham's failure to act is draining the resources of the federal courts because I have NO intention of sitting back while the Graham summarily dismiss my rights.

I have not bothered to mention all the bad decisions made by Graham and Lynch for that is a matter left for an appeal brief. I have tried to lay out the non-decisions of Graham and the unnecessary hassle, long delay, and prejudice visited upon me. I have filed a Notice of Appeal to attack the sloppy decisions of the Court, mostly of Frank Lynch, Jr. However, I can't file the appeal of the launching pad because Graham refuses to rule on my motion to proceed in forma pauperis. I filed a motion to proceed on appeal in forma pauperis on or about June 23, 2001. This motion has not yet been ruled on. Subsequently, I filed a PLAINTIFF'S MOTION FOR A RULING ON HIS IN FORMA PAUPERIS MOTION on or about July 10,2001. This motion has not been ruled on yet either. It has been more than three months and Graham has refused to rule on my motion to proceed in forma pauperis on appeal. I am a little sick and tired of this kind of behavior and I am not going to tolerate it.

Signed

4 "NA", means not available to Plaintiff because the Plaintiff does not have access to Pacer to get the Docket Number.