

Thursday, July 18, 2002

RE: Abuse of Power and Intimidation

Judge Complained Of: Donald L. Graham

TO: Clerk

Graham has improperly and illegally used his office to bring criminal contempt charges against me since the imitation of my last complaint on **February 8, 2002**. Graham used the taxpayers' stationery and affixed a case number to it, Case No. 99-14027-CIV-Graham, to give it the appearance of legitimacy, however, it is doubtful reasonable people will buy this given the facts. This case has been on appeal since the filing of a notice of appeal on June 25, 2001¹. Graham is using his office to retaliate against me because I have filed previous complaints against him pursuant to 28 U.S.C. § 372(c) and have brought a lawsuit (D.C. Case No. 02-14049, 11th Cir. Case No. 02-13418). against Graham, for acting in clear violation of legal authority. Unlike the Eleventh Circuit and Judge Graham, I don't just make conclusory statements and I feel compelled to layout the factual basis for my complaint. My complaint is supported by the following facts that cannot be denied, impeached, questioned, or doubted:

- On **July 30, 2001**, I initiated a lawsuit against Donald L. Graham bearing S.D.Fla. Case No. 01-14224-CIV-Middlebrooks. Contemporaneous with the filing of the lawsuit I filed a motion to proceed *in forma pauperis*.
- On **January 11, 2002** (six months after the suit was filed), Judge Middlebrooks, Graham's co-worker and colleague, denied my motion to proceed *in forma pauperis* in S.D.Fla. Case No. 01-14224-CIV-Middlebrooks.
- 28 U.S.C. § 372(c) Complaint #01-0054 was initiated by me on or about **September 14, 2001**.
- A Petition for Review (#01-0054) was filed on or about **November 13, 2001**.
- 28 U.S.C. § 372(c) Complaint #01-0068 was initiated by me on or about **November 22, 2001**.
- A Petition for Review (#01-0068) was filed on or about **December 18, 2001**.
- 28 U.S.C. § 372(c) Complaint #02-0006 was initiated by me on or about **February 8, 2002**.
- A Petition for Review (#02-0006) was filed on or about **February 23, 2002**.
- Judge Graham was served with a civil lawsuit, Case No. 02-14049-CIV-Moore, on **January 23, 2002**. This case is now on appeal bearing Case No. 02-13418. This lawsuit was originally filed in state court, Tenth Judicial Circuit, In and For Highlands County, Florida, Sebring, Florida, however Graham has this lawsuit removed to federal court where a co-worker, colleague, and personal friend [Judge Moore] could try the case.

¹ It is well settled law that the filing of a notice of appeal divests the lower court of jurisdiction. "The filing of a notice of appeal is an event of jurisdictional significance — it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982)(citing this Court, United States v. Hitchmon, 587 F.2d 1357 (CA5 1979)). See also Fogade v. ENB Revocable Trust, 263 F.3d 1274, 1286 (11th Cir. 2001); Dixon v. Edwards, 2002 U.S. App. LEXIS 9650,*19 n.14 (4th Cir. 2002); Holmes Group, Inc. v. Vornado Aircirculation Systems, Inc., Case No. No. 01-408, (Fed.Cir. 2002)(Decided June 3, 2002); Logan v. Burgers Ozark Country Cured Hams, 263 F.3d 447, 454 (5th Cir. 2001).

- The Order To Show Cause for criminal contempt was rendered on **February 25, 2002**.
- In July 2002, I received a call from my attorney, Public Defender

What we know from the unassailable facts above is that the Order to Show Cause with respect to criminal contempt followed three 28 U.S.C. § 372(c) Complaints, three requests for review, and a civil lawsuit filed against Judge Graham. This Court cannot escape these facts. Only the most gullible of souls or advocates of Judge Graham can say that there is no relationship between the foregoing facts. Judge Graham does not have the legal authority to use office to make me drop my lawsuit and appeal against him.

It has been the history of this Court to simply say, “The allegations of the Complaint are ‘directly related to the merits of a decision or procedural ruling,’” when a complaint is filed against a judge under 28 U.S.C. § 372(c). This has certainly been the history to complaints I have filed. This Court has not felt any particular obligation to have Judge Graham respond to any allegations so that his statements may be part of the record. An argument could easily be made that this Court is acting as an advocate for Graham. On the one hand this Court is quick to conclude that, ““The allegations of the Complaint are ‘directly related to the merits of a decision or procedural ruling,’” while this Court has been quick to dispose of every single petition I have filed. See Case No. 01-15754; 01-16217-G, 01-16218-H, 01-16135-D and making it difficult to prosecute a direct appeal in Case No. 01-13664. This Court has not requested that Judge Graham respond to any of the allegations I have raised in any complaint, rather this court has used the *in forma pauperis* statute to attack every single petition I have submitted and as a result this Court has successfully managed not to address any of the allegations of misbehavior I have directed towards Judge Graham. .

I would appreciate it if this Court would investigate my complaint to see if in fact Judge Graham is using his office for personal reasons and retaliation. I have filed complaints regarding these matters in accord with 28 U.S.C. § 372(c) with Chief Judge Anderson of the Eleventh Circuit, however, Judge Anderson cannot be trusted to discipline a colleague against a peon. I want the allegations in this complaint investigated, either Graham is breaking the law or he isn't. We don't need crooked and corrupt judges in our system of justice.

Signed

Marcellus M. Mason, Jr.

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Miscellaneous No. 02-0029

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 20 2003

THOMAS K. KAHN
CLERK

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

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

In this Complaint, Mr. Mason makes the unsupported allegation that Judge Graham has "improperly and illegally used his office to bring criminal contempt charges against me since the imitation (sic) of my last complaint on February 8, 2002". Although Mr. Mason does not submit any evidence or documentation in support of his allegation, Judge Graham did in fact issue an Order to Show Cause regarding possible contempt charges against Mr. Mason detailing why Mr. Mason should be charged with criminal contempt. Not one reason cited in this order relates to any complaints having been filed against Judge Graham by Mr. Mason.

The allegations that Judge Graham improperly and illegally issued the Order to Show Cause, and that it was issued in retaliation for Mr. Mason having filed complaints against Judge Graham are clearly disputed by Mr. Mason's behavior and obvious disregard for Judge Graham's Omnibus Order and are "directly related to the merits of a decision or procedural ruling". Therefore, pursuant to 28 U.S.C. § 372(c)(3)(A) and Addendum III Rule 4(a)(2), this Complaint is **Dismissed**.


Chief Judge