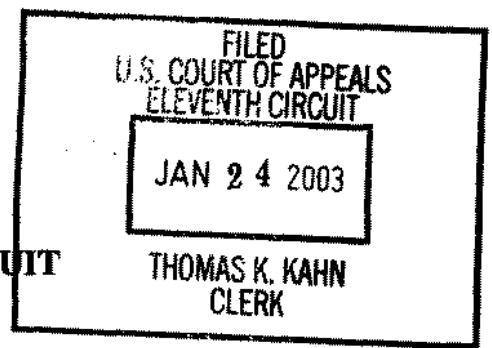


**CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Miscellaneous No. 02-0034



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

In his complaint, Mr. Mason alleges that Judge Graham has concealed or caused to be concealed, eleven specific documents that he claims to have filed with the district court in case No. 01-14310-CIV-Graham. Mr. Mason does not proffer any evidence or documentation other than the allegations themselves in support of his allegations, especially on the time, manner, and method particularities that would specifically involve Judge Graham in the documents' concealment, other than the allegations themselves.

The allegations in this complaint are merely conclusory and "frivolous". Therefore, pursuant to 28 U.S.C. § 372(c)(3)(A) and Addendum III Rule 4(a)(3), this complaint is **DISMISSED**.


Chief Judge

Tuesday, August 13, 2002

RE: Concealing Documents

Judge Complained Of: Donald L. Graham

TO: Chief Judge

Graham has violated 18 U.S.C. § 2071 by improperly concealing or causing to be concealing my filings and submissions to the Southern District of Florida. 18 U.S.C. § 2071 in pertinent part states:

(a) Whoever willfully and unlawfully conceals, **removes**, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or **deposited** with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, **having the custody** of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, **removes**, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

In Case No. 01-14310-CIV-Graham, Graham has concealed or caused to be concealed the

following documents that I have submitted to the Southern District of Florida:

- 1) *Plaintiff's Motion To Recuse*, dated October 22, 2001.
- 2) *Plaintiff's Notice Of Filing And Notice Of Non-Compliance*, dated 11-30-01.
- 3) *Addendum to Plaintiff's Motion To Remand To State Court And Plaintiff's Vehement Objections To Defendants' Notice Of Removal*, dated 12-1-01.
- 4) *Plaintiff's Reply To Defendants' Response To Plaintiff's Notice Of Filing And Notice Of Non-Compliance. Defendants' Response To Plaintiff's Notice Of Filing And Notice Of Non-Compliance*, dated December 11, 2001.
- 5) *Plaintiff's Statement Of Material Facts Which Preclude Summary Judgment In Favor Of Defendants*, dated February 19, 2002.
- 6) *Plaintiff's Notice Of Filing Affidavit In Opposition To Defendants' Motion Summary Judgment*, February 19, 2002.
- 7) *Affidavit In Opposition To Defendants' Motion Summary Judgment*, February 19, 2002.
- 8) *Plaintiff's Reply To Defendants' Response To Plaintiff's Motion To Compel Defendant's Answer To Plaintiff's Third Interrogatory For The Defendant Highlands County Board Of County Commissioners*, dated February 23, 2002.
- 9) *Affidavit In Support Of Plaintiff's Motion Summary Judgment*, dated March 26, 2002.

10) *Appeal And Objections To Order Of APRIL 12, 2002 Denying Plaintiff's Motion For Leave To Amend*, dated April 16, 2002. Graham denied this appeal even though it is not docketed. (Doc. 89).

11) *Appeal And Objections To Order Of April 12, 2002 Denying Plaintiff's Motions To Strike (DE #7) AND (DE #11)*, dated April 16, 2002.

None of these documents are shown on the docket of the S.D.Fla. even though they have been filed. Graham first pulled this shenanigan of hiding documents on or about October 9, 2001 in Case No. 99-14027-CIV-Graham. On or about on or about October 9, 2001, I submitted a *Plaintiff's Objections To R&R (DE #882) Of October 4, 2001*. See (DE #893). Graham hijacked this document and held it in his office and did not date-stamp it until February 4, 2002, or four months after it was mailed.

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. Additionally, Judge Anderson should recuse himself because he obviously is not objective when it comes to Graham because Judge Anderson has allowed Graham to "sit by designation" in Trustmark Ins. Co. v. Eslu, Inc., Eleventh Circuit (8/2/2002, No. 01-14917), not withstanding the fact that I have filed four complaints [01-0054, 01-0068, 02-0006, and 02-0029] against him pursuant to 28 U.S.C. § 372(c). As a matter of fact, Judge Anderson let Graham 'sit by designation" in Trustmark even though a complaint was currently pending against Graham, 02-0029, which was submitted on or about July 18, 2002. Serious allegations of misconduct were being raised against Graham, but Judge Anderson allowed Graham to help decide an appellate case anyway. This fact does not demonstrate that Judge Anderson has an open mind.

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.

Signed

Marcellus M. Mason, Jr.