

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Miscellaneous No. 05-0021

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

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 6 2005

S. K. KAHN
CLERK

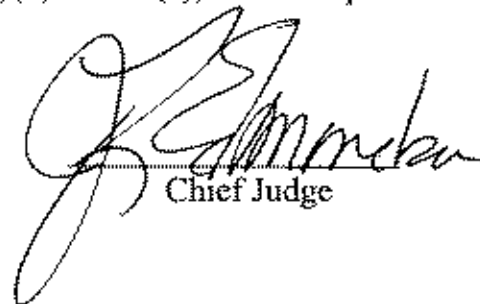
IN RE: The complaint of Marcellus M. Mason, against Donald L. Graham, United States District Judge for the United States District Court for the Southern District of Florida, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. § 351-364.

ORDER

Mr. Marcellus M. Mason filed this complaint against U.S. District Judge Donald L. Graham pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and Addendum III to the Rules of the Judicial Council of the Eleventh Circuit.

In this complaint Mr. Mason repeats allegations, filed in previous complaints, that Judge Graham should have recused himself, that Judge Graham refused to rule on several motions, and that Judge Graham required him to seek permission from a private law firm to communicate with his government. The only new allegation in this complaint concerns the attorney fees awarded by Judge Graham to the defendants in the amount of \$200,000.00. Mr. Mason claims Judge Graham lied in order to grant the fees.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling" and "successive". Therefore, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(ii) and Addendum III Rules 4(b)(2) and 18(c), this Complaint is **DISMISSED**.


Chief Judge

Saturday, February 19, 2005

J.L. Edmondson
c/o Thomas K. Kahn, Clerk
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 3030

Judge Edmondson, I believe your job is to investigate, not to seek a contrived or concocted reason for a summary dismissal. However, I have lightened your load by making all the documentation necessary to investigate this matter publicly available on the Internet. In general you can visit any of four different websites for documentation: (1)<http://secretlaw.com>; (2)<http://geocities.com/mcneilmason/>; (3)<http://donaldlgraham.blogspot.com>; (4)<http://mmason/freeshell.org>; Moreover, I have cited to the Internet where the appropriate documents can be downloaded.

Judge Graham has been accused of: intentionally lying and misrepresenting the law; refusing to rule on a motion for a preliminary injunction for more than 15 months; allowing scores of motions to go undecided; and usurping legal authority¹. These allegations were specifically mentioned and supported by actual documents in the following cases with the Eleventh Circuit: Direct Appeal, Case No. 01-13664-A, mandamus, Case No. 01-15754, however there is no mention of these allegations in any of these actions. Under the standard set forth in Chudasama v. Mazda Motor Corporation, 123 F.3d 1353 (11th Cir. 1997), Mr. Graham should have been disqualified for failing to manage the docket alone², without mentioning the lying and usurping legal authority, either of which required disqualification. It would appear that a law clerk at the Eleventh Circuit gave himself permission to simply ignore these very serious allegations because they can not be denied. This is unacceptable and simply will not be tolerated. Mr. Donald L. Graham is going to be held accountable for his actions. Please see URL:

<http://mmason/freeshell.org/refusetodiscuss.html>; and

<http://mmason/freeshell.org/trickery/trickery.htm>. It would appear that the Eleventh Circuit is unwilling to address allegations of misconduct by a federal judge either by the appellate process or by Section 372(c) complaint. Congress did make the appellate process and section 372(c) mutually exclusive. Your court has refused to address these allegations of misconduct in all forums, as your court has not found a forum where it wants to discuss and investigate these allegations. Answers like the following are insufficient and simply will not be tolerated:

The allegations of the Complaint are "directly related to the merit 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. §

¹ In Addition to the Internet, these allegations are fully supported and documented in my Complaint dated January 29, 2005, Complaint No. 05-0008, ALLEGATIONS OF MISCONDUCT SUPPORTED BY THE RECORD, pps. 2-4.

² "(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings" *Code Of Conduct For United States Judges*, Canon 3A"(5) A judge should dispose promptly of the business of the court." Id.

372(c)(3)(A) and (3)(B) and Addendum Three Rule 4 (a)(2), this Complaint is DISMISSED.

Mr. Graham awarded attorney's fees of a whopping \$200,000 based solely on his mere speculation of my motive's in filing the lawsuit. There is no real pretense of following the law. Moreover, Graham awarded attorney's fees of \$200,000 and then arbitrarily denied me in forma pauperis to fight of this illegal judgment. Mr. Graham and his Magistrate admitted that was not following the law. Mr. Graham and his Magistrate lied and made inconsistent statements in order to award attorneys' fees. In a lawsuit where I actually prevailed on the merits and had the the Plaintiff's lawsuit dismissed on summary judgment, Mr. Graham refused to aware me cost. How does one get appellate review of a whopping \$200,000 attorney's fees judgement when one is indigent?

Congress did not intend for Chief Judges to rid themselves of complaints of misconduct by simply citing, without investigation and substantiation, the summary dismissal clause of the statute. However, if they did, they should know. To that end, a copy of this complaint has been mailed to the 2004 Judicial Conduct and Disability Act Study Committee, the Chairman and ranking member of both the Judiciary Committee of the House of Representatives and Subcommittee on Courts, and J. Kennedy and Chief Justice Rehnquist as well.

BACKGROUND INFORMATION

This Complaint should not only be viewed and adjudged on its own merits, but it should also be viewed in context with the other 372(c) complaints filed against Mr. Graham and docketed under Case Nos. 05-0008, 05-0011, 05-0012, and 05-0013. The totality of these complaints will demonstrate a reckless behavior and contempt for the laws of this country. These documented acts of misconduct easily support the notion that "Judge" Graham must be impeached forthwith.

Mr. Graham passed up the opportunity to judge the quality of the lawsuit as he refused to act on both the Plaintiff's motion for summary judgment and the Defendants' motion for summary judgment. See (DE #507), DE #667);(DE #668);(DE #706); Doc. 706); (Doc. 797);(Doc. 769);(Doc. 770).

ALLEGATIONS OF MISCONDUCT SUPPORTED BY THE RECORD

1. Mr. Graham should have disqualified himself long before any motion for attorney's fees had been presented. "*Disqualification is mandatory for conduct that calls a judge's impartiality into question.*" U.S. v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001). As this Complaint and previous complaints clearly demonstrate Judge Graham should have disqualified himself because he: (1)he intentionally misrepresented the law; (2)refused to rule on a motion for a preliminary injunction for more than 16 months;(3)usurped legal authority by requiring me to seek the permission of a private law firm to communicate with my government;(4)allowed scores of motions to go undecided; (5)concocted a "pre-filing" injunction;(5)lied on a Civil Justice Act Report;(6)See Section 372(c) complaints docketed under Case Nos. 05-0008, 05-0011, 05-0012, 05-0013, and a complaint dated Wednesday, February 16, 2005 for more reasons Graham should have disqualified.
2. Mr. Graham and his Magistrate awarded the Defendants, Highlands County, a whopping award of \$200,000 that he admitted in writing had nothing to do with the law or the "merits". Moreover, Mr. Graham even lied in order to award the defendants \$200,000 in

attorney's fees. These allegations are fully supported by the following RECORD facts. See (DE #882), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE-882/de882.pdf> . (DE 891), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE-891/de891.pdf> .

- **The lie Mr. Graham told is that:** “*The Plaintiff has failed to make out a prima facie case.*” If I failed to make a prima facie then why did my lawsuit survive multiple motions to dismiss? See (DE #191); (DE #192); (DE #227); (DE #45); (DE #466). As a matter of fact, Graham and his rogue Magistrate, who are certainly not a friend to me, stated: “*This Court would also point out that this Report and Recommendation does not impact Counts One, Two, Three, Six and Fourteen which remain viable Counts of the Plaintiff's fourth Amended Complaint.*” (DE #435, pg. 8). More to the point, The defendants admitted by default that I established a prima facie case. “*In the present case, even assuming arguendo for purposes of this Motion that Plaintiff can establish a prima facie showing as to his discharge, Defendants have articulated a legitimate, non-discriminatory reason for dismissal.*” See Defendants' Motion For Summary Judgment And Supporting Memorandum of Law, Page 7. “*Regardless of whether Plaintiff can establish a prima facie case, Plaintiff's argument does not demonstrate that Defendants legitimate reasons were pretextual.*” (DE #699, Page 11). Such statements do not rebut a prima facie case, in fact, Plaintiff and the law contends that such statements are a tacit agreement that a prima facie case was made. Under the exact same set of circumstances in St. Germain v. Highlands County Board of County Commissioners, Case No. 14094, (S.D. Fla. 2001),(DE #58, Page 12), Mr. Graham concluded that Defendants had conceded that the Plaintiff had made a prima facie case of retaliation since the defendants did not contest the plaintiff's facts supporting a prima facie case.
- Mr. Graham admitted that he knew the law and was not going to follow it with respect to the awards of attorney's fees. At page 3 of the Report and Recommendation, Graham and his Magistrate admit that Christiansburg Garment Company v. Equal Employment Opportunity Commission, 434 U.S. 412 (1978) is the standard for awarding attorney's fees. “[A] plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.” Christiansburg Garment Co. v. EEOC, 434 U.S. 412 423 (1978). “*In determining whether a suit is frivolous, "a district court must focus on the question whether the case is so lacking in arguable merit as to be groundless or without foundation rather than whether the claim was ultimately successful.*” Sullivan v. School Bd. Of Pinellas County, 773 F.2d. 1182 (11th Cir. 1985). However, Mr. Graham later goes to state he is going to ignore the Christiansburg, the law as expressed by the U.S. Supreme Court for his own standard. “This takes the case beyond the analysis of frivolity.” (DE #882, pg. 4).
- Moreover, Graham awarded the Defendants attorney's fees in open defiance of the U.S. Supreme Court and its Christiansburg requirement for an offer to settle to have been made by the Defendants. “*This Court is not aware of any offers to settle.*” (DE #882, pg. 4). Moreover, Graham was presented competent evidence that the Defendants had no intention of settling this matter. “*County Administrator Carl Cool has said fighting Mason is a question of principle, a position echoed Thursday evening by his spokeswoman, Lisa Burley. . . . Giving in to Mason, including a settlement, would set bad precedent. Somebody must stop Mason's money hungry litigation, they say, regardless of*

the cost.” See **Plaintiff's Response In Opposition To Defendants' Verified Motion For Attorney's Fees And Costs And Supporting Memorandum Of Law**, Exhibit 1, Newspaper Article, Highlands Today, attached thereto.

- Mr. Graham and his Magistrate admit that I had no chance of paying \$200,000 in attorney's fees but awarded it to the defendants anyway. “[I]t does not appear as though the Plaintiff has any financial ability to pay any attorney's fees which may be assessed against him in this case.” (DE #882, pg. 7).
- After awarding the Defendants \$200, 000 in attorney's fees against me, Mr. Graham then decided to deny me *in forma pauperis status* to appeal this travesty. Moreover, Mr. Graham refused to offer any lawful reason for denying me IFP status. See (DE #906), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE-906/de906.pdf> .
- I prevailed on a summary judgment in a lawsuit filed against me by Highlands County and Mr. Graham refused to award me costs of less than \$200.00. See (DE #27), URL: <http://secretlaw.com/NewComplaint/HelpLetters/00-14240/Doc27/DE27.pdf> ; (DE #33), URL: <http://secretlaw.com/NewComplaint/HelpLetters/00-14240/Doc33/de33.pdf> ; (DE #35), URL: <http://secretlaw.com/NewComplaint/HelpLetters/00-14240/Doc35/1.jpg> .

Judge Edmondson, what “merits” was Graham acting on as he has admitted he didn't give a damn about the law? Mr. Graham's behavior has been reckless and arrogant. Mr. Graham has clearly disrespected the law and has virtually said by his actions that “I'll do whatever the hell I feel like doing!” This kind of attitude will not be tolerated and I will fight it until my death and beyond. I am going pound away at Judge Graham's RECORD. This Court is powerless to stop the truth of these allegations. The Eleventh Circuit and individual judges can only ruin its own reputation. Judge Graham's record has been downloaded by every segment of the legal community. Mr. Graham, Do you understand this matter is NOT over? Do you understand? Do You understand, boy? Hah? How dare a bunch of dishonest judges to tell me that I will wreck your life and it aint a damn thing you can do about it! In fact, I am reviewing Graham's record for more 372(c) complaints. Given Graham's extensive history this is an easy task. The other objective here is to have the Judicial Conduct and Disability Act Study Committee and Congress watch “sausage” being made with respect to section 372(c) complaints. Mr. Graham's behavior is no different from a street punk or bully, except that the street punk aint a liar!

Sincerely,

Marcellus M. Mason
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Phone: 863-314-9307

CC:

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