

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Miscellaneous No. 05-0022

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

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 27 2005

THOMAS K. KAHN
MARCELLUS M. MASON

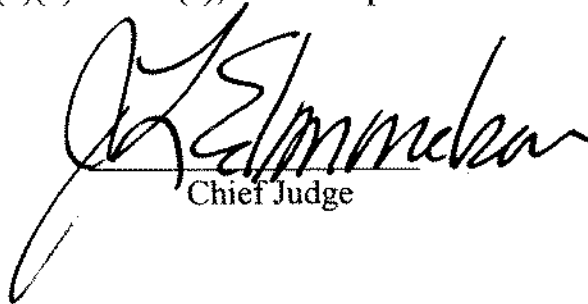
IN RE: The complaint of Marcellus M. Mason, against Stanley F. Birch, Jr., United States Circuit Judge for the United States Court of Appeals for the Eleventh Circuit, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. § 351-364.

ORDER

Mr. Marcellus M. Mason filed this complaint against U.S. Circuit Judge Stanley F. Birch, Jr. 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, although worded differently than his previous complaint regarding Judge Birch, Complaint No. 02-0054, Mr. Mason levels the same allegations regarding the opinion issued in appeal No. 01-13664, by a three judge panel of which Judge Birch was a member.

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

Thursday, February 17, 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 30303

RE: Section 372(c) Complaint against Judge Stanley F. Birch, Jr.

Judges Black, Marcus, and Birch were the panel members assigned to Eleventh Circuit Case No. 01-13664. These judges are guilty of misconduct because the following:

- Even though fully briefed on allegations of misconduct by Mr. Graham, and further that Mr. Graham should have disqualified because of these allegations, the panel's unpublished and unsigned opinion makes no mention of these allegations or whether Mr. Graham should or should have not have disqualified. [Appellant's Corrected Initial Brief](http://www.geocities.com/mcneilmason/secret/01-13664/CorrectedInitialBrief.PDF), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/CorrectedInitialBrief.PDF> , and Eleventh Circuits [unpublished opinion](http://www.geocities.com/mcneilmason/secret/01-13664/Opinion-OCR.htm) , URL: <http://www.geocities.com/mcneilmason/secret/01-13664/Opinion-OCR.htm> .
- The panel went beyond the scope of appeal to affirm Mr. Graham.

As a result of the above, the following has in fact occurred:

- My right to appellate review was undermined.
- Mr. Graham's conduct has been concealed.
- The panel's actions were dishonest.

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>;

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

Judges Black, Marcus, and Birch do not have the legal authority to go beyond the scope of appeal to affirm a fellow judge. No judge has a right to ignore an issue simply because it does not like the consequences. Judges Black, Marcus, and Birch do not have the authority to be dishonest, or to undermine an appeal right.

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 Rehnquist-Breyer Commission, 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.

ALLEGATIONS OF MISCONDUCT SUPPORTED BY THE RECORD

- **Lying and intentionally misrepresenting the law.** Graham stated in my lawsuit that I could not state a claim under 42 U.S.C. § 1981 against a state actor while at the very same time he allowed a Plaintiff to state a claim under 42 U.S.C. § 1981 against the very same state actor. In my lawsuit, Case No. 99-14027-CIV-Graham, Graham's Court stated: "*Counts Eight, Nineteen, Twenty-One, Twenty-Three and Twenty-Five deal with §1981 claims. This Court believes that those claims should likewise be dismissed pursuant to the Eleventh Circuit's opinion in [Butts v. County of Volusia, 222 F.3d 891\(11th Cir. 2000\)](#). In Butts, the Eleventh Circuit held that §1983 constituted the exclusive remedy against state actors for violation of rights contained in §1981. The Plaintiff has a valid §1983 count pending concerning his termination of employment. He has two Title VII claims as well as a disparate treatment claim pending. The Plaintiffs response does not give sufficient reason why he is entitled to plead a §1981 claim in light of the Butts decision. Therefore, this Court is going to recommend to the District Court that Counts Eight, Nineteen, Twenty-One, Twenty-Three and Twenty-Five be dismissed with prejudice.*" See [Page 3](#), Report and Recommendation, (DE #435), [Page 1](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2394948.jpg>; [Page 2](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2395120.jpg>, [Page 3](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2395222.jpg>, [Page 4](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2395620.jpg>, [Page 5](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2395722.jpg>, [Page 6](#), <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2395812.jpg>, [Page 7](#), [Page 8](#), and [Page 9](#). Graham signed this Report and Recommendation. See Order ([DE #466](#)), URL: [http://www.secretlaw.com/NewComplaint/HelpLetters/DE-](http://www.secretlaw.com/NewComplaint/HelpLetters/DE-435/New/P2395812.jpg)

[466/P2392413.jpg](#), [page 2](#), <http://www.secretlaw.com/NewComplaint/HelpLetters/DE-466/P2395357.jpg>. At the very same time, Graham was saying that I could not state a claim against a state actor under §1981, he was allowing the Plaintiff to state a claim under §1981 against the very same state actor, Highlands County Board of County Commissioners, in Case No. 00-14094-CIV-Graham, Fa Nina St. Germain v. Highlands County Board of County Commissioners. Fa Nina St. Germain's §1981 claims were disposed of on the facts, not the law and not Butts v. County of Volusia, 222 F.3d 891(11th Cir. 2000), in Case No. 00-14094-CIV-Graham. See Pages [2](#), Order on Summary Judgment, pages Case No. 00-14094, ([PDF](#)), url: <http://www.secretlaw.com/NewComplaint/HelpLetters/00-14094/de58.pdf>, ([Doc. 58, JPG](#)), pps: [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [27](#). Clearly, Judge Graham either lied to me or Fa Nina St. Germain as he could not have told the truth to the both of us.

- **Refusing to Rule on an important motion.** Allowing a motion for a preliminary injunction for to languish in court for 574 days and not making a ruling. The motion for preliminary injunction was initially filed on November 24, 1999. See (DE #39). See [PacerReportsDocketEntries99-14027.html](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/PacerReportsDocketEntries99-14027.html>. Essentially, Graham gave himself permission not to rule on a motion for injunctive relief. Despite repeated requests, Graham refused to disclose why he wouldn't rule on the motion for a preliminary injunction. As a side matter, when I filed [petition for mandamus](#), <http://www.secretlaw.com/NewComplaint/HelpLetters/11305/MandamusPetition.pdf>. (Case No. 01-11305) with the Eleventh Circuit, the Eleventh Circuit simply stated: "*His mandamus petition, however, is frivolous because he has failed to establish that he is entitled to mandamus relief to compel the district court to rule on his motion for preliminary injunction.*" See Order Dated April 26, 2001, [page 1](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/11305/P2176502.jpg>, [page 2](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/11305/P2176601.jpg>. .
- **Allowing scores of motions to languish** in court for up to 8 months and not taking any action¹.

¹ 438	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	6/15/01733
5/18/01	NA ⁴ 6/18/01	734	5/18/01
NA	6-18-01		

- Usurping legal authority** by telling me, a non lawyer, that I must seek the permission of a private for profit law firm in order to request public records under Florida Law, or to speak with the government directly. Moreover, this injunction is was issued by a mere Magistrate Judge who by law can not issue an injunction. In fact, no judge has the authority to tell anybody that they cannot communicate with the government. This is a really stupid order that is not worth debating. *“Plaintiff shall correspond only with Defendants' counsel including any requests for public records.”* (DE #246), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/P2173532.jpg>; page 2, URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/P2173717.jpg>; See also (DE #201), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE201Orders/de201.pdf>, where Judge Graham's Magistrate outlaws direct communication with the government. Additionally, even though Judge Graham was sued personally for acting in clear violation of all legal authority, neither Judge Graham, the Assistant U.S. Attorney, nor the Eleventh Circuit would state where Judge Graham got the legal authority to render these orders, (DE #201), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE201Orders/de201.pdf>; (DE #246), <http://secretlaw.com/NewComplaint/HelpLetters/DE201Orders/de246.pdf>. See [Graham's Lawuit](http://secretlaw.com/NewComplaint/HelpLetters/GrahamLawsuit.html), <http://secretlaw.com/NewComplaint/HelpLetters/GrahamLawsuit.html>.
- Concealing Information and falsely completing a Civil Justice Reform Act Report.** When Judge Graham completed his Civil Justice Reform Act Report for March 31, 2001, he shows that he had no motions pending for more than 6 months. This information is false because the motion for a preliminary injunction had been pending for more 492 days or about 16.4 months. [CJRA Report](#), URL: <http://www.secretlaw.com/NewComplaint/HelpLetters/CivilJusticeReformActReport.pdf>. See above. Congress did not engage in a meaningless exercise in passing the Civil Justice Reform Act, it wanted accurate information. Mr. Graham does not have the legal authority to conceal the fact that he failed to rule on a motion for more than 15 months.

RECORD FACTS SUPPORTING THIS COMPLAINT

A direct appeal was originally docketed for Eleventh Circuit Case No. 01-13664-A (D.C. Case No. 99-14027-CV) on **July 3, 2001**. See [Appeal Docketing Letter](#) , URL: <http://www.geocities.com/mcneilmason/secret/01-13664/docketappeal.pdf>. Judge Graham, “*sua sponte*”, and without due process notice, wrote an order restricting my filings on **September 20, 2001**, or three months after the case was noticed for appeal. See [DE-878](#), URL: <http://www.geocities.com/mcneilmason/secret/99-14027/de878.pdf>. The appeal briefs were not actually filed until February and March of 2002. Appeal Briefs: [First Initial Brief](#) (Stricken), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/InitialBriefPending.pdf> [Corrected Initial Brief](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/CorrectedInitialBrief.PDF> , [Appellees Answer Brief](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/AppelleeBrief.pdf>, [Reply Brief](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/ReplyBrief.pdf>, [Appellant's Motion For Rehearing](#). URL: <http://www.geocities.com/mcneilmason/secret/01-13664/MotionForRehearing.pdf> On October 16, 2002, this court made the following bold and unequivocal statement:

NA 6-2-01 NA 6-2-01

Moreover, despite the closure of the case by the district court, Mason's continual filing of motions with the court addressing matters previously settled prompted the district court to prohibit Mason from further filings without explicit permission and initiate criminal contempt proceedings. Therefore, the record supports the district court's implicit finding that a sanction less than dismissal of the action with prejudice would have had no effect.

See Opinion_OCR.htm, pgs. 13,14, <http://geocities.com/mcneilmason/secret/01-13664/Opinion-OCR.htm>. As if this wasn't bad enough, (going "beyond the scope of appeal"), the Eleventh Circuit struck my brief for arguing this order and then turned around used it against me. See [01-13664 Order Striking Appellant Brief.pdf](http://www.geocities.com/mcneilmason/secret/01-13664/01-13664_Order_Striking_Appellant_Brief.pdf), URL: http://www.geocities.com/mcneilmason/secret/01-13664/01-13664_Order_Striking_Appellant_Brief.pdf; and Appeal Briefs: [First Initial Brief](http://www.geocities.com/mcneilmason/secret/01-13664/InitialBriefPending.pdf) (Stricken), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/InitialBriefPending.pdf>. This court has boldly admitted to these facts: "*This Court granted, in part, the appellees' motion to strike Mason's brief, holding that the portions of the brief that related to the September 20, 2001 order were beyond the scope of appeal.*" See pg. 4, Opinion, Eleventh Circuit Case No. No. 04-11894-B, URL: <http://geocities.com/mcneilmason/secret/04-11894/04-11894.tif>

Judge Edmondson where do I go to have the veracity of my allegations tested? Where do I go to remedy acts of misconduct committed by a Judge? Please help me seek redress in some forum?

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. If Mr. Graham were an honorable man, he would not allow his colleagues to risk their reputations being tarnished in order to save his skin. At what point does the dishonesty end? Is the Eleventh Circuit prepared to destroy its legitimacy and its prestige in the legal community to save Mr. Graham from his record?

Sincerely,

Marcellus M. Mason
218 Atterberry Drive
Sebring, FL 33870
Phone: 863-314-9307

CC:

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