

Related Background Information

This document is part of a series in which gross misconduct by Judge Donald L. Graham and Magistrate Frank Lynch Jr. is documented at <http://mmason.freeshell.org>, <http://mcneilmason.wordpress.com>, <http://donaldlgraham.blogspot.com>, and <http://geocities.com/mcneilmason>. These websites allege and **document** gross misconduct which would otherwise be incredulous and beyond belief. These websites demonstrate that federal judges will lie to protect themselves and each other and conceal their misconduct through the use of unpublished decisions. A long list of misconduct and abusive behavior by U.S. Dist. Judge Donald L. Graham is fully documented at: <http://mmason.freeshell.org/CoreAllegations.htm>.

Important Information about this Document

This document is an example of a “pre-filing injunction”, “leave to file injunction”, “vexatious litigant injunction”, “pre-filing injunction”, “filing injunction”, “1651 injunction”. The purpose of a pre-filing injunction is to deter and stop the filing of frivolous lawsuits. A pre-filing injunction “is an extreme remedy, and should be used only in exigent circumstances. [De Long v. Hennessey, 912 F.2d 1144 \(9th Cir. 1990\)](#). On September 20, 2001, Judge Graham rendered a pre-filing injunction sua sponte, or on his motion and without notice to the litigant Marcellus M. Mason. See [Docket Entry Number 878, \(D.E. # 878\)](#). Page 3, of this document boldly asserts: **THIS CAUSE came before the Court sua sponte.** In this same sua sponte issued pre-filing injunction Judge Graham makes a so-called “finding of bad faith”. **“It has become clear to the Court that Mason is proceeding in bad faith.. Such activity is in bad faith and will not be permitted by the Court.”** ([D.E. #878, pg. 5, 6](#), “Bad Faith” section). This pre-filing injunction is illegal for several reasons:

- A pre-filing injunction may not issue sua sponte without notice and opportunity to respond. Courts routinely reject pre-filing injunctions issued without notice and opportunity to respond even when the courts feel that the pre-filing injunction is otherwise valid. [U.S. v. Powerstein, 2006 U.S. App. LEXIS 14928, *;185 Fed. Appx. 811 \(11th Cir. 2006\)](#)(litigant entitled to notice and an opportunity to be heard before the court imposed the injunctive order). See <http://mmason.freeshell.org/RejectSuaSponte.htm>.
- A “finding of bad faith” requires due process and notice opportunity to respond prior to its issuance. The United States Supreme Court has stated: “A court **must**, of course, exercise caution in invoking its inherent power, and it **must** comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.” (emphasis added) [Chambers v. Nasco, Inc., 501 U.S. 32, 50 \(1991\)](#).
- This pre-filing injunction fails to identify a single lawsuit that was adjudged to be frivolous. “A pre-filing injunction cannot issue merely upon a showing of litigiousness.” [De Long](#), supra; [Tripathi v. Beaman, 878 F.2d 351 \(10th Cir. 1989\)](#)(“Litigiousness alone will not support an injunction restricting filing activities.”)

See also [Cok v. Family Court Of Rhode Island, 985 F.2d 32 \(1st Cir. 1993\)](#)(“It would have been helpful had the court identified what previously filed frivolous cases or other abuses caused it to issue this injunction.”). Judge Graham intentionally misstated or lied about the amount of lawsuits that were filed. See [Judge Graham Misstates Material Facts and Law To Support Pre-Filing Injunction](#).

Judge Graham Previously Rejected A Pre-filing Injunction

Defendant Highlands County filed a lawsuit, Case No. 00-14240, against Mason asking for a pre-filing injunction. However, on **January 16, 2001**, Judge Graham and his Magistrate Frank Lynch, Jr. said the following:

However, at this point, none those other cases have totally dismissed with prejudice. There are viable claims pending in those cases. * * * While there are other pending cases between these parties, there is nothing near the extent of the litigation which this Court and the Eleventh Circuit Court of Appeals usually look for justifying injunctive relief.”

Case No. 00-14240, ([D.E. #27, dtd. 1-16-01](#))([D.E. 33 dtd. 2-13-01](#)). Between **January 16, 2001** when Judge Graham made the statement above, and **September 20, 2001**, when Judge Graham rendered the pre-filing injunction *sua sponte*, [Document No. 878](#), Mason did not file any new lawsuit.

Implications and Importance of this Pre-filing Injunction

Judge Graham needs this sua sponte issued pre-filing injunction to help save his career and reputation. The following abusive and dishonest acts have occurred as a result of this sua sponte issued pre-filing injunction:

- The Eleventh Circuit has refused to review this sua sponte issued pre-filing injunction on multiple occasions. See [Eleventh Circuit, U.S. Court of Appeals, Sets Guinness World Record For Refusing to Review Sua Sponte Issued Pre-Filing Injunction](#).
- The Eleventh Circuit used this sua sponte issued pre-filing injunction on appeal to affirm Judge Graham while simultaneously disallowing Mason to argue against its validity. See [Eleventh Circuit Case No. 01-13664: The Appeal From Hell](#).
- The Eleventh Circuit allowed Judge Graham and colleagues to use this clearly void and illegal sua sponte issued pre-filing injunction to form the basis of a criminal contempt complaint and conviction. [Eleventh Circuit Sits Idly By While A Clearly Void Sua Sponte Issued Pre-Filing Injunction Wreaks Havoc On A Man’s Life](#) .
- Chief Judge J.L. Edmondson, Eleventh Circuit, U.S. Court of Appeal, has stated that abuse of the criminal contempt procedure is not misconduct. See [Judge J.L. Edmondson Mocks the Judicial Misconduct and Disability Act](#) at mmason.freeshell.org/372c/.

Case No. 01-14230-CIV-GRAHAM/LYNCH

MARCELLUS M. MASON, JR.,

Plaintiff,

vs.

HIGHLANDS COUNTY BOARD OF
COMMISSIONERS, et. al.,

Defendants.

Case No. 01-14240-CIV-GRAHAM/LYNCH

HEARTLAND LIBRARY COOPERATIVE,
HIGHLANDS COUNTY BOARD OF COUNTY
COMMISSIONERS, et. al.,

Plaintiffs,

vs.

MARCELLUS M. MASON, JR.,

Defendant.

**OMNIBUS ORDER ENJOINING PLAINTIFF FROM FILING ANY PLEADINGS IN
THE ABOVE CAPTIONED CASES OR ADDITIONAL LAWSUITS RELATING THERETO
WITHOUT COURT PERMISSION**

THIS CAUSE came before the Court sua sponte.

THE COURT has considered the record in the above captioned cases, the various pleadings and is otherwise fully advised in the premises.

BACKGROUND

Plaintiff Marcellus M. Mason ("Mason") has filed eleven (11) cases and/or counterclaims in this District, all against either the

Highlands County Board of County Commissioners, the Highland Library Cooperative and/or various board members or employees of the County and Library. (collectively the "Defendants").¹ Each case relates to his prior employment by Defendants and Defendants' treatment of Mason after his termination.

Original Action

Mason's original action against Defendants was case no. 99-14027. (the "Original Action").² After vexatious and relentless litigation on the part of Mason, including continual attempts to directly communicate with the Defendants rather than their attorneys, the Court enjoined Mason from any further contact with the Defendants or Defendants' employees. Mason, however, ignored the Court's order and continued to contact the Defendants. In his various e-mails to the Defendants, Mason stated: 1) "Anybody who supports your position on this matter is a racist and is part of the problem. I fear no man!!! This includes white men wearing robes."; 2) "You don't have enough insurance and smart lawyers to outrun the law and defeat me."; 3) "I ain't going to have a handfull of white bigots run over me."; 4) "Now go call your daddy

¹ Mason has filed an additional action against the Judges and lawyers involved in his other cases, Case No. 01-14224-CIV-MIDDLEBROOKS/BANDSTRA. In issuing this Order, the Court is not preventing Mason from filing pleadings in case number 01-14224.

² Case Numbers 99-14042, 99-14257, 99-14314 were consolidated with Case number 99-14027.

in Fort Pierce and see if he can get you out of this mess.”;
5)”. . .the hell I would give them, hell like you are getting . .
. I ain’t going to be bully by no racist whie man.” (Case Number
99-14027, D.E. #646).

On June 20, 2001, in view of Mason’s repeated refusal to
comply with the Court’s rules and orders, the Court dismissed
case number 99-14027. This dismissal, however, appears to have
had no effect on Mason. He continues to file new cases, and
multiple pleadings in already existing cases, all relating to the
same issues that have been dismissed. Indeed, Mason often files
three or four pleadings on a daily basis, with each pleading
requesting identical relief to that requested in previous
pleadings or cases.

Bad Faith

It has become clear to the Court that Mason is proceeding in
bad faith. Indeed, he has admitted as much in his own pleadings
and correspondence. Mason has written:

I treated your lawsuit with the contempt and disrespect
it deserved . . . now you are about to be punished for
filing this frivolous action. . . Later, chumps.

(Case No. 01-14240 Defendants’ Response to Mason’s Motion to
Amend, Exhibit 1.)

“[Deposition of a witness will be] a fishing expedition
[where Mason will seek information] relevant or not”

“[A]re you people learning something from the
multiplicity of pleadings you are receiving from me.”

(Case No. 00-14240 Complaint, Exhibit 1, Compilation of e-mail transmissions).

These statements are just examples of the numerous comments made by Mason, both to Defendants and to the Court of his intent to needlessly protract litigation and harass the Defendants. Such activity is in bad faith and will not be permitted by the Court.

DISCUSSION

Federal courts have "both inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." Peck v. Hoff, 660 F.2d 371 (8th Cir. 1981); see also In re McDonald, 489 U.S. 180, 184 n.8 (1989). The Eleventh Circuit has consistently upheld district court injunctions against abusive litigants, including pre-filing screening restrictions. See Martin-Trigona v. Shaw, 986 F.2d 1384, 1387 (11th Cir. 1993) (citing Copeland v. Green, 949 F.2d 390 (11th Cir. 1991)), and has stressed that, "[c]onsiderable discretion is necessarily reposed in the district court" when it drafts such orders, Martin-Trigona, 986 F.2d at 1387 (citing Procup v. Strickland, 792 F.2d 1069, 1074 (11th Cir. 1986) (en banc)).

The Eleventh Circuit has specifically affirmed injunctions against vexatious litigants that include "filing and screening requirements" or "Rule 11 bonds" to curb abusive practice." See e.g., Copeland, 949 F.2d at 391 (finding injunction barring

litigant from entering federal courthouse and delivering documents to the clerk impermissibly restrictive, but upholding other curbs, including pre-screening by application); Cofield v. Alabama Pub. Serv. Comm'n, 936 F.2d 512, 518 (11th Cir. 1991) (determining courts may not completely bar access, but stating "courts may take other, more creative actions to discourage hyperactive litigators as long as some access to the courts is allowed"); Procup, 792 F.2d at 1074 (holding litigant may be "severely restricted as to what he may file and how he must behave in his applications for judicial relief"). Accordingly, when federal court integrity and jurisdiction must be protected from an abusive litigant, the Court may fashion an appropriate remedy that does not completely foreclose access to the federal courts.

Upon review of the record before the Court and a review of the District Court docket, the Court finds that a "screening requirement" for any future pleadings in the above captioned cases and for any future lawsuit which relates to Mason's prior employment by or other interaction with Defendants is mandated. This screening requirement best balances the interest in constitutionally mandated access to the federal courts with the need to protect the Court's jurisdiction and integrity. The interest of justice require the Court to stop this pattern of abusive and wasteful litigation. Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff Marcellus M. Mason is Permanently enjoined from filing any additional pleadings in case numbers 99-14027-CIV-GRAHAM, 00-14116-CIV-GRAHAM, 00-14201-CIV-GRAHAM, 00-14202-CIV-GRAHAM, 00-14240-CIV-GRAHAM, 01-14074-CIV-GRAHAM, 01-14078-CIV-GRAHAM, and 01-14230-CIV-GRAHAM or from filing any new lawsuit which relates in any way to Plaintiff Marcellus M. Mason's former employment and/or subsequent interactions with Defendants without first receiving permission from the Court, as set forth below. This injunction shall apply equally to any persons or entities acting at the behest, direction, or instigation, or in concert with Marcellus M. Mason.

2. Any request for permission to file a new lawsuit relating to the issues in the above captioned cases and/or Mason's former employment and/or subsequent interactions with Defendants SHALL be in the form of an application filed with the Clerk of Court and addressed to United States District Judge Donald L. Graham. This application shall consist of a one paragraph explanation of the issues in the proposed lawsuit, shall contain the names of all proposed parties and shall not exceed one page. The application shall not include any proposed pleadings.

3. Any request for permission to file additional pleadings in the above captioned cases already before the Court SHALL be in the form of an application filed with the Clerk of Court and addressed to United States District Judge Donald L. Graham. This application shall consist of a one paragraph explanation of the requested relief in the proposed pleading, and shall not exceed one page. The application shall not include the proposed pleading.

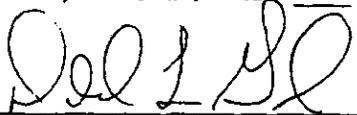
4. Pursuant to this Order, the Court may require a \$1000 - \$5000 "Rule 11 Bond," to ensure compliance with all Federal and Local Rules during the course of the proposed litigation. Upon the completion of the lawsuit, if Plaintiff has complied with all Federal and Local Rules as determined by the presided Judge, the bond may be returned at the complete discretion of the presiding Judge. Imposition of such Bond shall be at the discretion of the presiding Judge.

5. Pursuant to this Order, the Clerk of Court is Directed to accept no new pleadings in the above captioned cases or no new filings as described above save upon the order of the Court and then only after appropriate application.

6. The Court shall retain jurisdiction over this matter to ensure compliance with this Order.

7. The Clerk of Court shall provide a copy of this Order to the Supervising Clerks at each Office of the Clerk in this District.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of September 2001.


DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Lynch
Clerk of Court, Operations Manager
Marcellus M. Mason, Jr.
Maria N. Sorolis