

**United States Court of Appeals for the Eleventh Circuit.**

Case No. 01-13664-A  
L.T. No. 99-14027-CIV-Graham

MARCELLUS M. MASON, JR.,

Plaintiff/Appellant/Petitioner

v.

HIGHLANDS COUNTY BOARD OF COUNTY  
COMMISSIONERS, et.al.

Defendant/Appellees/Respondent

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In re Marcellus M. Mason, Jr., Petitioner  
Case No. 01-13664-A  
L.T. No. 99-14027-CIV-Graham

**MOTION FOR RECONSIDERATION AND CLARIFICATION**

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United States District Court  
Southern District of Florida  
Donald L. Graham, Judge  
Frank Lynch, Magistrate Judge

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Marcellus M. Mason, Jr.  
Pro Se  
218 Florida Drive  
Sebring, FL 33870  
Phone: 863-385-801

Case No. 01-13664-A  
L.T. No. 99-14027-CIV-Graham

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1, APPELLANT hereby certifies the following list of individuals and entities are known to me to have an interest in the outcome of this particular case:

Marcellus M. Mason, Jr. , petitioner

Highlands County Board of County Commissioners, respondent

Heartland Library Cooperative

Maria N. Sorolis, Esq., attorney, respondent

Brian Koji, Esq., attorney, respondent

Donald L. Graham, United States District Court Judge

Frank Lynch, Jr., United States Magistrate Judge

Appellant, Marcellus M. Mason, Jr., hereby demands that this motion to be directed to a Three Judge panel and seeks reconsideration of this Court's order denying the *Appellants' Motion to Proceed In Forma Pauperis*. In support of this motion, Petitioner states the following:

1. On December 12, 2001, a Judge, whom the Appellant is unable to identify, signed an order denying Appellant's motion to proceed *in forma pauperis*. This Judge stated, "appellant has not truthfully provided this Court with information concerning his ability to pay the filing fee and docketing fees." This is an erroneous conclusion and it is unclear to the Appellant what the factual basis is for this conclusion, but here are the facts:

- Appellant, Marcellus M. Mason, Jr., has not been employed since September 1999.
- Appellant has no cash on hand or in a bank account. As a matter of fact, Marcellus M. Mason, Jr. does not even have a bank account these days as the bank got tired of negative balances and closed the account. It has occurred to Mason that somebody maybe assuming because Mason sent a check to pay for the Mandamus petition in Case No. 01-15754-A that Mason has a "stash" of cash. However, if whomever made this conclusion would have taken the time to examine the check, they would have noticed that the check has the following information printed on it. Marcellus M. Mason and Mary Mason, 214 Florida Drive, Sebring, FL, phone 863-385-8501. This would be appellants' mother and father.
- Appellant receives no income of any kind, nor does Marcellus M. Mason, Jr. receive any type of government handout, nor has he asked for any, to include food stamps. Marcellus M. Mason, Jr. does receive tremendous financial support from his mother and brothers, all of whom believe in his cause.
- Appellant wife works at Taco Bell for 25 hours or less each week.
- Appellant's home mortgage was \$458.00 a month as reported, but now this mortgage has swelled to \$573.00 a month in order to catch up the 2 monthly mortgage payments that are in arrears. Chase Manhattan Bank was nice enough to do this and not foreclose because Mason is an U.S. Army veteran, wartime, and has a VA home loan. *See Exhibit 1.*
- Appellant's water bill is one month in arrears. *See Exhibit 2.*

- Appellants electricity bill is one month in arrears. *See Exhibit 3.*
  - Appellants' has a student loan and owes the U.S. Government more than \$13,000. *See Exhibit 4.*
  - Appellant car has been repossessed and now the bank wants the entire \$3500.00 they say Mason's owes. *See Exhibit 5.*
2. Mason filed his Petition for Writ of Mandamus And Petition For Writ Of Prohibition on September 29, 2001. This Petition for Writ of Mandamus And Petition For Writ Of Prohibition was subsequently docketed under Case No. 01-15754-A. This writ was subsequently denied without comment on December 5, 2001.
  3. On or about March 8, 2001, Petitioner filed a writ of mandamus, Case No. 01-11305-H, with this Court and a motion to proceed *in forma pauperis* . This Court denied the Petitioner's motion to proceed *in forma pauperis* because "Mason has an alternative remedy. He may either comply with the district's discovery order and challenge it on appeal from the final judgment, or refuse to comply with the order and challenge its validity if cited for contempt." This order was signed "/s/ Ed Carnes."
  4. Section 1915 only provides a Court with two options to deny a motion to proceed *in forma pauperis* . The motion can be denied on the basis that the lawsuit is frivolous or that the applicant is able to pay. The District Judge has deprived this Court of the frivolous option because he, Graham, has failed to rule on scores of motions to include summary judgment motions by both the Plaintiff and the Defendants. In fact, the failure of Graham to do his job and timely rule on matters presented to him is a major reason why this appeal is being filed.

Which of Mason's financial obligations should he forego to pay this Court's filing fee? This Court has absolutely no proof or a factual basis for the conclusion that the," appellant has not truthfully provided this Court with information concerning his ability to pay the filing fee and docketing fees." None exists, Marcellus M. Mason, Jr.'s financial condition is exactly what he says it is and frankly, it is actually worse. Appellant deeply resents any conclusion that he has not been truthful and is getting a little sick and tired of unsupported bald-faced legal conclusions. The integrity of Marcellus

M. Mason, Jr. is as good as any Judge in Atlanta, GA or Miami, Florida, or the United States period and the appellant deeply resents any implication otherwise. A reasonable person could conclude, given the number of times Appellant has sought review of this case and a different reason for a denial of a review each time, that somebody at the Eleventh Circuit does not want any part of this case. Appellant is tired of having to keep negotiating moving hurdles. Graham, district judge, and the attorneys must have known that the Eleventh Circuit is full of pitfalls for non-lawyers, otherwise they would not insist on trying to get a case affirmed where the district court is clearly wrong. Appellant is unaware of any Court in the entire history of the United States to issue a “pretrial discovery issue and not an injunction per se” to a nonlawyer stating that a nonlawyer can not communicate with his government or request public records under Florida Law without first obtaining the permission of a private-for-profit lawfirm. Nor has this Court, counsel, or the district court even attempted to cite a single case to support this proposition. However, everybody concerned has thrown one procedural hurdle after another in the Appellant’s direction. Appellant is angered and frustrated by this process, but undeterred. Appellant insists on his right to access to the Courts and a decision on the merits, not on Graham’s rank conjecture about Appellant’s motives, which are as a matter of law, irrelevant.

WHEREFORE, and based upon the foregoing, Marcellus M. Mason, Jr. requests that this grant his motion to proceed *in forma pauperis* as this Court has absolutely no factual basis to conclude that the petitioner is able to pay the filing fee. In the alternative, Appellant requests that this Court set forth any and all facts it has to justify any decision to deny the motion.

Respectfully Submitted:  
Marcellus M. Mason, Jr.  
218 Florida Drive  
Sebring, FL 33870  
863-385-8501

Dated this 15<sup>th</sup> day of December, 2001

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail, postage prepaid, first class, on December 15, 2001, to: Allen, Norton & Blue, 324 South Hyde Park Avenue, Suite 350, Tampa, Florida, 33606.

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