United States District Court
Southern District of Florida
Ft. Pierce Division

Marcellus M. Mason, Jr.,
Plaintiff,
vs.
HEARTLAND LIBRARY COOPERATIVE,
HIGHLANDS COUNTY BOARD OF COUNTY COMMISSIONERS, et. al.,
Defendants

Case No.: 99-14027-CIV-GRAHAM
PLAINTIFF'S MOTION FOR CLARIFICATION OF COURT ORDERS (DE #201) AND (DE #246)

PLAINTIFF, Marcellus M. Mason, Jr. hereby submits his Plaintiff's *Motion For Clarification Of Court Orders (DE #201) And (DE #246)*. In support of this motion, Plaintiff states the following:

1. Neither this Court, counsel, nor the Eleventh Circuit, has ever stated where Lynch, a Magistrate Judge, got the legal authority to issue orders granting the defendants "a pretrial discovery issue not an injunction per se." (DE #201, 246).
2. In the instant motion, Plaintiff poses only one question for the Court. **By what legal authority does the Magistrate act in issuing the orders in question, (DE #201, 246), directing that a nonlawyer must seek the permission of a private for profit lawfirm in order to communicate with his government directly and request public records under Florida Law?** The refusal by this Court to previously answer this inquiry is needlessly wasting the judicial resources of multiple courts.
3. As pointed out to this Court in the Plaintiff's *Notice Of Filing Florida Bar Complaint Correspondence* submitted to this Court on or about January 12, 2002, and *Petitioner's Notice of Supplemental Authority* filed with the Eleventh Circuit on or about January 12, 2002, counsel has been unable to cite to the Florida Bar any legal authority for the orders in question, notwithstanding the fact that counsel asked for these orders. Even though counsel is at risk of being sanctioned by the Florida Bar for intentionally misrepresenting the law, counsel still is unable to share the source of authority it relied upon in asking for the orders in question.

MEMORANDUM OF LAW

Rule 60(b), Fed.R.Civ,P.

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) ; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; ….. (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

The mere fact that a notice of appeal has been filed does not preclude a party from filing a Rule 60(b) motion. Moreover, this Court may grant relief under Rule 60(b) during the pendency of an appeal subject to the requirements of the Eleventh Circuit. In Lairsey v. Advance Abrasives Co., 542 F.2d 928 (5th Cir. 1976), the Court held:

> What should a trial court do, in the position of the district court in this case, when a Rule 60(b) motion is filed after appeal has been noticed? Certainly the movant should give notice to the appellate court that the motion has been filed and request that no action be taken on the appeal.[fn3] As we have already pointed out, the district court can deny the motion. If inclined to grant the motion, it so indicates and the movant can then apply to the appellate court for remand for the trial court to enter its order. Ferrell v. Trailmobile, supra. These suggestions are not, however, a judicial tightrope to be walked at peril. Where the litigant has timely initiated procedure for relief, he should not be penalized for choice of the "wrong" procedure. There should be an opportunity for the district court in the first instance to reach the merits of the motion and either deny it, or, if the motion is to be granted, seek authorization to grant it. The court of appeals should be kept informed of what is occurring so that it can take appropriate action with respect to the pending appeal.
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> There need be no motion in the court of appeals for leave to file the Rule 60(b) motion in the district court, or for leave to the district court to consider it. See discussions at 11 Wright & Miller, Federal Practice & Procedure § 2873, at 269-70, and 7 Moore, Federal Practice ¶ 60.30[2], at 419-24.

See also Hakim v. Hicks, 223 F.3d 1244, 1251, n.7 (11th Cir. 2000).

Respectfully submitted:
Marcellus M. Mason, Jr.
218 Florida Drive
Sebring, FL 33870

Dated this 16th day of January 2002

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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 January 16, 2002, to: Allen, Norton & Blue, 324 South Hyde Park Avenue, Suite 350, Tampa, Florida, 33606

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