

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

DENNY C. CORMIER,	:	
	:	
Plaintiff, pro se	:	
	:	Civil Action No. 6:04-cv-19 (HL)
v.	:	
	:	
MARIA GREEN, Acting Director,	:	
Georgia Department of Human	:	
Resources, in her Official Capacity,	:	
et.al.,	:	
	:	
Defendants.	:	

PLAINTIFF’S MOTION FOR RECONSIDERATION

Comes now the Plaintiff, pro se, requesting this court to grant relief to accomplish justice by reconsidering its Order of Dismissal pursuant to Federal Rules of Civil Procedure Rule 60 (a) and (b).

In support he offers,

1. Through inadvertence, and a good faith mistake this court was unaware of the Removal to this Federal Court of the State action to which this court wishes to defer (styled in State court as Nancy B. Cormier v. Denny C. Cormier, Case No. 03-CVD-2211, from the Superior Court of Colquitt County, Georgia).
2. The above State action was Removed to this Federal Court, June 24, 2004 and was assigned Federal Case Number 6:04-CV-30. (Attached)
3. Plaintiff noticed this Court of this related case on the JS 44 form filed with the Removal above.

4. It has come to the Plaintiff's understanding that no internal or administrative procedure or policy exists for the Clerk of this Court to notify other judges of the existence of a later filed related case.
5. The Defendants, nor this court, chose to seek remand of the Removal action pursuant to 28 U.S.C. 1447.
6. The Plaintiff acted in good faith in both his pleadings before this court.
7. Because no action exists or is on going in State court, this court need have no fear of failure to grant comity to the State court.

WHEREFORE the Plaintiff requests this court reconsider its Order of Dismissal and instead Deny Defendant's Motion to Dismiss as comity to the State court is not at issue in the instant case because no State court proceeding exists and there is no ongoing State court proceeding.

Respectfully Submitted,

Denny C. Cormier, pro se
1000 Mallory Street, # 38
St. Simons Island, Georgia, 31522
Telephone 912 634 8675
Fax 912 634 8675
Email doctorcormier@aol.com

**MEMORANDUM OF LAW FOR MOTION TO RECONSIDER ORDER OF
DISMISSAL**

Standard to Grant a Motion for Reconsideration

Reconsideration is generally denied “unless the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995).

“A motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances.” United States v. International Bhd. of Teamsters, 247 F.3d 370, 391 (2d Cir. 2001). “The burden of proof is on the party seeking relief from judgment[.]” *Id.* Rule 60(b) provides, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence ...;
- (3) fraud ..., misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, ... or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

Subpart (6) “confers broad discretion on the trial court to grant relief when appropriate to accomplish justice [and] it constitutes a grand reservoir of equitable power to do justice in a particular case.” Matarese v. LeFevre, 801 F.2d 98, 106 (2d Cir. 1986), cert. denied, 480 U.S. 908 (1987)(citations and quotation marks omitted). Furthermore, “it is properly invoked where there are extraordinary circumstances, or where the judgment may work an extreme and undue hardship[.]” *Id.*; see also Virgin

Atl. Airways, Ltd. v. National Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992)

(courts may reconsider an earlier opinion if there has been an “intervening change of controlling law . . . new evidence [has become available], or [there is a] need to correct a clear error or prevent manifest injustice”) (citation and quotation marks omitted).

Prayer for Relief

WHEREFORE the Plaintiff prays this court,

1. Reconsider its Order Granting Motion to Dismiss and instead,
2. Deny the Motion to Dismiss and,
3. Recognize comity is not at issue for this court’s consideration because no state court action or open proceeding exists and
4. Order parties to proceed.

Respectfully Submitted,

Denny C. Cormier, pro se
1000 Mallory Street, # 38
St. Simons Island, Georgia, 31522
Telephone 912 634 8675
Fax 912 634 8675
Email doctorcormier@aol.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion has been served via U.S. mail to John J. Jones, Senior Assistant Attorney General, and Laura W. Hyman, Assistant Attorney General, Department of Law, 40 Capitol Square, S.W., Atlanta, Georgia 30334-1300, and to Dwight May, Esq., Attorney for Nancy B. Cormier, P.O. Box 1660, Moultrie, GA 31776, this 18th day of August, 2004.

Respectfully Submitted,

Denny C. Cormier, pro se
1000 Mallory Street, # 38
St. Simons Island, Georgia, 31522
Telephone 912 634 8675
Fax 912 634 8675
Email doctorcormier@aol.com