

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF PENNSYLVANIA

Don Bailey and John/Jane Does 1-25	:	CIVIL ACTION
Plaintiffs	:	NO.
v.	:	
	:	
Disciplinary Board of the Supreme	:	
Court of Pennsylvania; Paul	:	
Killion; and John/Jane Does 1-10	:	
Defendants	:	:INJUNCTIVE RELIEF
	:	:DEMANDED
	:	:JURY TRIAL DEMANDED

**MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER
AND FOR PRELIMINARY INJUNCTIVE RELIEF**

And Now, Comes Don Bailey, Plaintiff in the above captioned matter, who moves upon this Court for an Emergency Temporary Restraining Order and for Preliminary Injunctive Relief pursuant to Fed. R. Civ. P. 65, and in support thereof, Plaintiff states as follows:

1. Plaintiff has filed a Complaint pursuant to Section 1983 for injunctive relief this date, and incorporates the same herein by reference in its entirety. Plaintiff notes that, due to the urgency of this matter, he neglected to attach Exhibits A, B, and C to the Complaint Exhibit A being the petition for King's Bench/extraordinary jurisdiction, Exhibit B being the petition for review, and Exhibit C being correspondence from the Pennsylvania Supreme Court Prothonotary. Those exhibits are attached hereto.

2. Plaintiff seeks a Temporary Restraining Order in accordance with the provisions of Fed. R. Civ. P. 65, which, in general, mirrors the standards for granting preliminary injunctive relief. In order to obtain preliminary injunctive relief, Plaintiff must demonstrate: (i) a reasonable probability of eventual success in the litigation; (ii) the likelihood of immediate and irreparable harm which cannot be compensated by damages; (iii) that an injunction would serve the public interest; and (iv) that a greater injury may result from denial of the injunction than from its being granted. *Instant Air Freight Co. v. C. F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989). Plaintiffs can clearly meet the required showing, and the additional showing necessary to support a temporary restraining order
3. Plaintiff specifically seeks, through his request for emergency relief, that this Court restrain the Defendants Pennsylvania Supreme Court Disciplinary Board and Killion, Chief Disciplinary Counsel, from proceeding with the hearing scheduled for August 11 and 12, 2011, and, upon a hearing as set forth under Rule 65, a further Order preliminarily enjoining any further proceedings by those defendants.
4. Plaintiff is entitled to proceed in these matters without regard to the anti-injunction statute, 28 U.S.C. 2283, for two primary reasons: Plaintiff brings valid and legitimate claims under 42 U.S.C. 1983, which has been held as providing a specific exception to the anti-injunction statute in any case; and, Plaintiff raises

substantial claims for violations of his right to due process of law. See Mitchum v. Foster, 407 U.S. 225 (1972).

5. Moreover, on the record as it stands, the primary matter is the imminent violation of plaintiff's right of confrontation under the Sixth Amendment, being permitted by violations of his Fourteenth amendment right to due process of law, and, of course, the further loss of his license to practice law, a property right, and the rights of the 25 John Doe clients, rights the protection of which is at the heart of this Court's equitable duties.
6. Furthermore, federal courts may require the observance of special procedures when necessary to assure compliance with the dictates of the Federal Constitution. Harris v. Rivera, 454 U.S. 339 (1981). "Federal law confers rights binding on state courts," and the subject-matter jurisdiction of which must accord with federal principles. Gulf Shore Co. v. Mobil Oil Corp., 453 U.S. 473, 478 (1981). Execution of a judgment entered by a state court without due process is a proper matter for federal court jurisdiction. See American Surety Co. v. Baldwin, 287 U.S. 156, 164-69 (1932); see also McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation, 496 U.S. 18 (1990) (denial of rights by state courts can be a federal constitutional violation).
7. As set forth herein, Plaintiff presents a clear right to relief on his claims that he has and continues to be deprived of his rights to due process of law, both substantive

and procedural, and this Court has a mandatory duty to act when a proper controversy is brought before it and requesting the exercise of jurisdiction to restrain the imminent violation of an American citizen's rights.¹

8. The petition for review filed with the Pennsylvania Supreme Court specifically included, preliminarily, the following language:

An appropriate Order should issue directing the continuance of that proceeding. In addition, respondent is in the process of preparing a federal civil rights complaint on behalf of he and numerous of his clients, all of whom will be named plaintiffs, and perhaps others not yet named, and will be seeking declaratory and injunctive relief pursuant to 42 U.S.C. § 1983. At the present time, respondent expects to seek an emergency temporary restraining order as well as preliminary and permanent injunctive relief, and the continuance of scheduled hearing will obviate the need to seek the emergency relief. This request will be made known to the federal court when the motion for declaratory and injunctive relief is filed, and this petition will be attached thereto.

Plaintiff has faxed copies of the Complaint and will be faxing a copy of this motion immediately upon its filing to Elaine Bixler, Secretary of the Board, the ODC, and the hearing committee to satisfy all notice obligations for relief under Rule 65. They are invited to participate in any and all proceedings related to this request, and plaintiff will keep them apprised of its status, should they not cease and desist and stand down otherwise.

¹ Federal courts are vested with a "virtually unflagging obligation" to exercise the jurisdiction given them. *Colorado River Water Conservation Dist. v. United States*, 424 U. S. 800, 817-818 (1976). "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821).

9. Plaintiff filed his Complaint *pro se*, and on behalf and of his as of yet unidentified plaintiffs, and specifically verifies that all of the facts in the Complaint and this Motion, and all its attachments are true and correct subject to penalties of perjury.
10. Plaintiff intends to file an Amended Complaint, submit affidavits and evidence and testify to all the matters raised in these proceedings, and to seek all further legal and equitable relief that is appropriate under the circumstances.
11. Plaintiff submits that the record of this matter, standing alone, makes self-evident that plaintiff and many others will suffer injury that will never be reparable, and that his right to relief is clear, and that he meets the standard of Rule 65 for the granting of a temporary restraining order and preliminary injunctive relief. All of these matters have been repeatedly brought to the attention of the defendant, and the Pennsylvania Supreme Court, and have been deliberately unaddressed, and allowed to remain unaddressed. The matters are easily identified and their impact on Plaintiff's rights is clear, and it is also clear that all defendants do not intend to do anything but persist in this rogue, egregious, and outrageous course of conduct in deliberate disregard of Plaintiff's constitutional rights. The basis for this Court to act could not be more clear.
12. It is undisputedly in the public interest that this Court act to restrain the acts as alleged. The matters at issue, i.e., the history of failing integrity in the

Pennsylvania Courts, has received, and is receiving national attention, and that the matters at issue are of the utmost public importance.

Wherefore, Plaintiff respectfully requests an immediate Order, in the form of a Temporary Restraining Order, enjoining the defendant Supreme Court Disciplinary Board from proceeding with the hearings set for August 11 and 12, 2011, and that proceedings be scheduled for a hearing on plaintiff's request for preliminary injunctive relief, and for any and all other relief as this Court may otherwise deem, just and proper.

Respectfully Submitted,

By: /s/Don Bailey, Esquire
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