IN THE FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

WILLIAM M. WINDSOR, **Plaintiff,**	)	
v.	)	**CIVIL ACTION FILE**
FULTON COUNTY, ET AL. **Defendants.**	)	**NO.: 2011-CV-206243**

BRIEF IN OPPOSITION TO OCTOBER 7, 2011 HEARING AND PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Comes now the Office of the Fulton County Attorney, by special appearance on behalf of Fulton County[1], without waiving any affirmative or other defenses, including insufficiency of service of process, pursuant to O.C.G.A. §§ 9-11-8 and 12, and objects to the hearing scheduled for October 7, 2011.

Although in a proper case, which this is not, a court of equity does have the authority to enter injunctive relief without hearing, Plaintiff has not provided this court with any authority that would allow the imposition of injunctive relief, without service on any defendant, having first been perfected. In order to institute an action and thereby constitute it a pending action, there are two pre-requisite

[1] To date, none of the putative defendants have been served. However, since Plaintiff advised the Office of the Fulton County Attorney of the filing of this matter, in an abundance of caution and without waiving any defenses including insufficiency of service of process, the Office of the County Attorney is providing a response to Plaintiff's request for injunctive relief.

steps: 1) the fling of the complaint, and 2) the service of process. Neither one, without the other, can make up a pending action. Register v. Sanders, 103 Ga. App. 368, 370, 119 S.E.2d 294 (1961)("[t]he filing of a suit with the clerk of the court does not constitute the beginning of an action unless process issue and service be finally had. The mere filing without the issuance of process is not the institution of an action").

Where, as here, service of the petition and process were not lawfully perfected on any of the defendants, it would constitute error for this court to proceed to hear Plaintiff's application for injunctive relief. See, Stallings v. Stallings 127 Ga. 464, 470, 56 S.E. 469 (1907)("[i]In this state the filing of the petition in the clerk's office will be considered as the commencement of the suit, if service is perfected as required by law. But, if no service is made, the mere filing of a petition will not suffice to authorize the action to be treated as commenced and perpetually pending. Filing followed by service creates a pending suit from the date of filing. But, if there is no service, the process loses its vitality.") Since there has been no valid service to date, there is no pending action and the October 7, 2011 scheduled hearing should not go forward.

I. INTRODUCTION

On September 27, 2011, Plaintiff filed a Verified Complaint seeking, among other things, to temporarily restrain and preliminarily enjoin the named defendants from: 1) interfering with Plaintiff's attempts to present evidence to the grand jury; 2) denying Plaintiff access to the elevator lobby outside the Fulton County District Attorney's Office; and 3) destroying any evidence or erasing or modifying any information on any computers relevant in any way to Plaintiff. A copy of the Verified Complaint was delivered to the Office of the County Attorney, ostensibly to effect service upon Fulton County, Plaintiff has not properly perfected service upon any defendant. Thus, the time for filing a response to the Verified Complaint has not yet expired. Plaintiff nonetheless unilaterally set this matter for hearing on October 7, 2011, seeking preliminary injunctive relief before the defendants have been properly served.

The immediacy for any expedited relief is wholly unsupported by the Verified Complaint which affirmatively alleges that the conduct of which Plaintiff's complains – access to the Grand Jury – was provided to Plaintiff on August 19, 2011. See Complaint, ¶ 43. Plaintiff cannot establish immediate irreparable harm sufficient to obtain even a temporary restraining order, much less a preliminary injunction, before an answer and motion to dismiss are filed or any discovery conducted. As set forth more fully within, Plaintiff is not entitled to any

expedited injunctive relief or any equitable relief, temporary, preliminary or otherwise.

II. FACTS

Plaintiff is a serial filer of Complaints against all of the judges in the Northern District of Georgia and the Eleventh Circuit Court of Appeals, certain staff members of these judges, the United States Attorney for the Northern District of Georgia, lawyers on her staff and the Northern District Clerk of Court (collectively "the federal judiciary").[2] The gravamen of Plaintiff's complaint is that the federal judiciary has conspired to deprive him of "justice" and certain rights afforded to him by the Georgia and United States Constitutions in connection with several previous lawsuits decided adversely to Plaintiff in the federal district courts. In the previous cases, Windsor has filed hundreds, if not thousands, of frivolous pleadings, wasting time and resources of both the federal court and this court, and the defendants in these numerous actions. Mr. Howard was included as a defendant in Plaintiff's last three lawsuits because Mr. Howard refused to comply with Plaintiff's request that he file criminal charges against the federal judiciary.

[2] This is the fifth action Plaintiff has filed in Fulton County Superior Court in the past five months: *Windsor v. Duffey, et al.*, 2011-cv-200857 (May 19, 2011); *Windsor v. Hatten et al.*, 2011-cv-200971 (May 20, 2011); *Windsor v. Thrash, et al.*, 2011-cv-202263 (June 20, 2011); *Windsor v. Huber, et al.*, 2011-cv-202457 (June 23, 2011); *Windsor v. Howard, et al.*, 2011-cv-206243 (September 27, 2011). Mr. Howard has been named as a defendant in Plaintiff's last three complaints. These lawsuits are included in at least seven previous lawsuits Plaintiff has filed in continued attempts to collaterally attack a final judgment that the federal District Court entered in a case styled *Maid of the Mist Corporation, et al. v. Alcatraz Media, LLC, et al.*, No. 1:06-cv-0714-ODE (N.D. Ga.).

On July 15, 2011, Judge Thrash, in the case of Windsor v. Hatten, et al., Case No. 1:11-cv-1923-TWT, in the United States District Court for the Northern District of Georgia, entered an Order prohibiting Plaintiff "from filing any complaint or initiating any proceeding, including any new lawsuit or administrative proceeding, in any court (state or federal) or agency in the United States without first obtaining leave of a federal district court in the district in which the new complaint or proceeding is to be filed." (Exhibit A) Plaintiff clearly has not complied with Judge Thrash's requirement that Plaintiff first obtain leave of court prior to filing this action.

The instant action seeks, ultimately, to attain Plaintiff's goal of having the Fulton County Grand Jury refer criminal charges against the federal judiciary. Based on the foregoing, it is respectfully submitted that Plaintiff should not be permitted to continue his abuse of the justice system. Plaintiff's request for equitable relief should be denied so that this case does not result in further waste of judicial and defense time and resources.

III. SUMMARY OF ARGUMENT

The purpose of a temporary restraining order or interlocutory injunction is to preserve the status quo while a case is pending. This type of equitable relief is an extraordinary and drastic remedy. Plaintiff alone bears a heavy burden in proving that there is a substantial likelihood that he will prevail on the merits. Secondly,

Plaintiff will not be irreparably harmed if a preliminary injunction is denied. Thirdly, granting the requested preliminary injunctive relief would cause significant harm to the independence of the Grand Jury and would interfere with the Sheriff's ability to assure the safety of the Grand Jurors. Furthermore, plaintiff cannot prove that the public interest is served in granting injunctive relief. Because the elements for granting a temporary restraining order and preliminary injunction are not fully satisfied, Plaintiff's request must be denied.

IV. ARGUMENT AND CITATION OF AUTHORITIES

Pursuant to O.C.G.A. §§ 9-5-1 and 9-11-65, this Court may issue injunctive relief under appropriate circumstances. The issuance of injunctive relief lies within the sound discretion of the Court. O.C.G.A. § 9-5-8. However, in exercising this discretion, the Court is to be guided by the purpose of such relief which is to preserve the status quo and balance the conveniences of the parties, pending a final adjudication of the case. Atlanta Dwellings v. Wright, 272 Ga. 231, 233, 527 S.E.2d 854 (2000). Significantly, in conducting this analysis, the merits of the underlying dispute are not at issue, see Ingram v. KIK Realty Co., Inc., 199 Ga. App. 335, 337-8, 404 S.E.2d 802 (1991), only whether the status quo is endangered and the relative impact of the injunction on the parties.

The status quo in this instance is that Plaintiff has been afforded an audience with the Grand Jury. (Complaint ¶ 43). Plaintiff has cited this Court to no

authority, statutory or otherwise, that would require the Grand Jury to entertain Plaintiff again. The status quo in this instance is that Plaintiff has been issued a criminal trespass warning for harassing Grand Jurors as they entered and exited their jury room. Plaintiff has cited this Court to no authority, statutory or otherwise, that would require the District Attorney or the Sheriff to allow Plaintiff to lay in wait for Grand Jurors as they enter and exit their jury room. Therefore Plaintiff is not entitled to injunctive relief. Furthermore, Plaintiff seeks not to maintain the status quo, but rather to change the status quo. This court is required to focus on the facts as set forth in the complaint, rather than the misguided legal conclusions therein. The facts reveal that what Plaintiff ultimately seeks is to carry out a personal vendetta against the federal judiciary the Fulton County Grand Jury. Even though Plaintiff admits that he was granted an audience with the Grand Jury, he nevertheless, is pursuing the instant action against individuals whom he perceives to have hampered his ability to convince the Grand Jury to take the action he seeks.

The purpose of a temporary restraining order and preliminary injunction is to protect a plaintiff from irreparable harm and to preserve the court's ability to render a meaningful decision after a trial on the merits. "In short, there *must be some vital necessity for the injunction* so that one of the parties will not be damaged and left without adequate remedy. Treadwell v.

Investment Franchises, Inc., 273 Ga. 517, 519 (2001) (citing Kennedy v. W.M. Sheppard Lumber Co., 261 Ga. 145, 146 (1991)). (Emphasis added). In the instant matter, there is no vital necessity for injunctive relief. Plaintiff will not be injured if injunctive relief is not forthcoming and the status quo will be maintained.

Lastly, because Plaintiff's allegations against the federal judiciary are meritless, the relief Plaintiff seeks must be denied. This court must consider the fact that Plaintiff's complaint is utterly devoid of merit. "If the law and the facts make a final order in the plaintiff's favor unlikely, the interlocutory injunction can be denied. See Sweeney v. Landings Assoc., Inc., 277 Ga. 761, 762 (2004); see also Parker v. Clary Lakes Recreation Assoc., Inc., 272 Ga. 44, 45 (2000) (trial court properly considered the validity of the plaintiff's legal position in denying interlocutory injunction). Accordingly, when this Court considers the unlikelihood of Plaintiff acquiring a final order in his favor, Plaintiff's request for an interlocutory injunctive relief must be denied. See Sweeney, 277 Ga. at 762; Parker, 272 Ga. at 45. The public has an interest in the orderly administration of the Grand Jury

V. CONCLUSION

The Verified Complaint utterly fails to demonstrate that there is any immediate harm to Plaintiff, whatsoever, much less irreparable harm. Furthermore, the

Verified Complaint seeks to change, rather than maintain the status quo. Because Plaintiff cannot prevail on the merits of his claims, Plaintiff is not entitled to preliminary injunctive relief and his request should be denied.

If the Court decides to issue injunctive relief, it is respectfully requested that as required by Rule 65 of the Civil Practice Act, O.C.G.A. § 9-11-65, that Plaintiff be required to post a bond sufficient to cover the damage that Defendants may incur if it is determined that the injunction was wrongfully issued. Defendants request that Plaintiff be required to post such a bond in the amount of no less than fifty thousand dollars ($50,000)[3].

Respectfully submitted, this the 6th day of October, 2011.

OFFICE OF THE FULTON COUNTY ATTORNEY

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[3] In *Windsor v. Hatten*, 1:11-cv-1923-TWT, pending in the United States District Court for the Northern District of Georgia, the federal district court entered an order requiring Plaintiff to post a bond in the amount of $50,000 in any action naming a federal defendant. (See Exhibit A). In *Windsor v. Huber*, 1:11-cv-2326-TWT, the district court again required the posting of a $50,000 bond as a condition precedent to Plaintiff's filing of additional pleadings in that action. (See Exhibit 3). This court should likewise require the posting of a bond given Plaintiff's demonstrated unjustified litigiousness .

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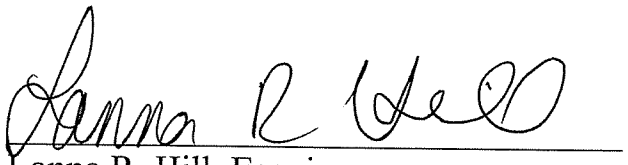
CERTIFICATE OF SERVICE

This is to certify that Plaintiff was served with a copy of the foregoing **BRIEF IN OPPOSITION TO OCTOBER 7, 2011 HEARING AND PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**, via electronic mail and by first class postage prepaid, addressed as follows:

William M. Windsor
PO Box 681236
Marietta, GA 30068

This 6th day of October, 2011.



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