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8 JUDGE JAMES G. BERTOLI, JUDGE ROBERT S. BOYD and
SUPERIOR COURT OF SONOMA COUNTY

9
10 IN THE UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NATALIA A. SIDIAKINA and SHERRYL
BAECKEL,

13 Plaintiffs,

14 v.

15 JAMES G. BERTOLI, JUDGE, in his official
and personal capacity; ROBERT S. BOYD,
16 JUDGE, in his official and personal capacity;
SUPERIOR COURT OF SONOMA COUNTY;
17 TARA REILLY, JUDGE, in her official and
personal capacity; SUPERIOR COURT OF
18 SAN BERNARDINO COUNTY; IGNAZIO J.
RUVOLO, PRESIDING JUSTICE in his
19 official and personal capacity; TIMOTHY A.
REARDON, JUSTICE, in his official and
20 personal capacity; PATRICIA K.
SEPULVEDA, JUSTICE, in her official and
21 personal capacity; CALIFORNIA COURT OF
APPEAL, FIRST APPELLATE DISTRICT,
22 DIVISION FOUR; RONALD M. GEORGE,
CHIEF JUSTICE, in his official and personal
23 capacity; JUDICIAL COUNCIL OF
CALIFORNIA, STATE OF CALIFORNIA, and
24 JUDICIAL BRANCH OF CALIFORNIA
GOVERNMENT,

25 Defendants.
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Case No: CV 10-03157 JSW

**DEFENDANTS JUDGE JAMES G.
BERTOLI, JUDGE ROBERT S. BOYD AND
THE SUPERIOR COURT OF
CALIFORNIA, COUNTY OF SONOMA'S
EX PARTE APPLICATION REQUESTING
EXTENSION OF TIME TO RESPOND TO
COMPLAINT AND REQUEST FOR
ORDER REQUIRING PLAINTIFFS TO
POST BOND; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF KEVIN E. GILBERT**

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the Honorable James G. Bertoli, the Honorable Robert S. Boyd
3 and the Superior Court of California, County of Sonoma (hereinafter "Defendants"), submit this Ex
4 Parte Application requesting this Court grant the following relief:

5 1. Extend the time in which all Defendants are allowed to respond to Plaintiffs' First
6 Amended Complaint until thirty days following either: 1) service of all Defendants; or 2) Plaintiffs'
7 posting of a bond (whichever is later); and

8 2. Order for Plaintiffs to post a bond as security under Local Rule 65.1-1 and California
9 Code of Civil Procedure Section 391.3 prior to being allowed to proceed with this litigation.

10 Counsel for Defendants advised Plaintiffs via telephone of their intention to file this Ex Parte
11 Application and requested Plaintiffs stipulate to the relief requested herein; Plaintiffs refused.
12 Defendants have not sought or obtained any prior extensions of time nor have they submitted any other
13 requests for relief in this action. Such request is timely and necessary to allow additional time to
14 prepare a Motion to Dismiss, to address Plaintiffs' prior classification as vexatious litigants, and to
15 assure that Defendants are allowed the opportunity to recover the fees and costs incurred in defending
16 against this frivolous litigation.

17 This Ex Parte Application shall be based upon this Application, the Memorandum of Points and
18 Authorities herein below, the Declaration of Kevin E. Gilbert filed concurrently herewith together with
19 such oral and documentary evidence as will be submitted to the Court for consideration.

20 Dated: December 16, 2010

Respectfully submitted,

21 MEYERS, NAVE, RIBACK, SILVER & WILSON

22
23 By: 

24 Kevin E. Gilbert
25 Attorney for Defendants
26 JUDGE JAMES G. BERTOLI, JUDGE
27 ROBERT S. BOYD and SUPERIOR COURT
28 OF SONOMA COUNTY

MEMORANDUM OF POINTS AND AUTHORITIES

This matter is simply the next chapter in a long history of litigation by Plaintiffs. In essence, Plaintiffs are attempting to argue that they are “qualified individuals” who are entitled to “special accommodations” by the appointment of free legal counsel in their various civil and family law matters. As referenced in Plaintiffs’ First Amended Complaint, the issues presented in this litigation were previously adjudicated at the trial court and later through appeal,¹ without success. (First Amended Complaint at 13:16-23.) Following the appellate court’s order rejecting Plaintiff Sikiakina’s arguments, Plaintiffs filed the current federal litigation against all judges and courts involved in the underlying state court proceedings.

Defendants request this Court require Plaintiffs to post security prior to being allowed to proceed with this litigation. Defendants further request additional time be allowed for all Defendants to respond to the First Amended Complaint until such time as the issue of security has been resolved and service completed on all Defendants.

I. Plaintiffs Should Be Required To Post Security

There is a very strong likelihood of Defendants prevailing in this litigation. First, Plaintiffs’ claimed right to free legal counsel is inapplicable to the civil and family law claims asserted by Plaintiffs. The general rule is that there is no due process right to counsel in civil cases. The right to counsel has been recognized to exist only where the litigant may lose his physical liberty. (*Lassiter v. Department of Social Services*, 452 U.S. 18, 25 (1981); see also *County of Santa Clara v. Superior Court*, 2 Cal.App.4th 1686, 1691 (1992).) Thus, Plaintiffs’ claim to a right of appointed free legal counsel in the civil setting fails as a matter of law.

Even assuming that some legal justification exists to support Plaintiffs’ claims, the Defendants are immune from liability because all of Plaintiffs’ allegations are predicated upon the Defendants presiding over litigation involving Plaintiffs. (*Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001).) Plaintiffs’ claims are also precluded by the principal of res judicata and the Rooker-Feldman doctrine because all of the issues raised in the First Amended Complaint were previously adjudicated in state court. In fact, the First Amended Complaint suggests that the entirety of Plaintiffs’

¹ The prior appeal was prosecuted only by Plaintiff Sidiakina.

1 requested relief in the federal action seeks to overturn the prior state court rulings (including their
2 classification as vexatious litigants), addressing the identical claims at issue in this litigation. (First
3 Amended Complaint at 14:23; 25:7-8; 26:25-27.)

4 Plaintiffs concede in their First Amended Complaint that they were classified as “vexatious
5 litigants” and request the federal court overturn the state court’s ruling. (First Amended Complaint at
6 26:25-26.) Plaintiffs’ prior classification as vexatious litigants provides further justification for this
7 court to issue an order requiring Plaintiffs post adequate security to assure that Defendants are able to
8 recoup their fees and costs following dismissal of this frivolous action. This court should thus require
9 Plaintiffs to post security in this matter before being allowed to proceed, as there is virtually no
10 possibility that Plaintiffs will prevail in this lawsuit. Authority for this request is found within the
11 Northern District’s Civil Local Rule 65.1-1, which provides in relevant part as follows:

12 “Upon demand of any party, where authorized by law and for good cause shown,
13 the Court may require any party to furnish security for costs which can be awarded
14 against such party in an amount and on such terms as the Court deems appropriate.”

15 The “costs” referenced in Local Rule 65.1-1 include not only statutory costs but also any recoverable
16 attorneys’ fees. Federal courts are also vested with inherent authority to require a plaintiff to post
17 security for costs where necessary or appropriate. (*In Re Merrill Lynch Relocation Management, Inc.*,
18 812 F.2d 1116, 1121 (9th Cir. 1987).)

19 Here, Plaintiffs have filed suit against three judges, three justices and the Chief Justice of
20 California as well as the related state courts without regard to the applicable immunities and defenses
21 held by each of the Defendants. Plaintiffs, knowing of the prior state appellate court rulings and
22 proceedings on these very issues, still decided to improperly prosecute this matter.

23 Plaintiffs’ attempts to pursue this meritless litigation is also a basis for Federal Rules of Civil
24 Procedure, Rule 11 sanctions. As confirmed by the Supreme Court, a party who actually signs a
25 pleading is subject to the Rule 11 certification standard, which imposes “an affirmative duty to conduct
26 a reasonable inquiry into the facts and the law before filing...” (*Business Guides, Inc. v. Chromatic
27 Communications Enterprises, Inc.*, 498 U.S. 533, 551 (1991).) Rule 11 authorizes sanctions against a
28 party for prosecution of a frivolous claim, even one which is pursued by an “empty-headed pure-heart”

1 litigant. (*Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829, 833 (9th Cir. 1986).) Sanctions are
2 appropriate and recoverable against the persons – whether attorneys, law firms, or parties – who
3 violate Rule 11 or who are responsible for the violation. (FRCP 11(c)(1); Committee Notes on
4 Amendments to Federal Rules of Civil Procedure (1993) 146 FRD 401, 588; Federal Civil Procedure
5 Before Trial, section 17:174.)

6 Further support for Defendants' position is found under California law, namely Plaintiffs' prior
7 classification as vexatious litigants. California Code of Civil Procedure Section 391.3 provides that
8 following a court's designation of a plaintiff as a vexatious litigant, the court *shall* order that plaintiff
9 to furnish, for the benefit of the moving defendant, security in such amount and within such time as the
10 court shall fix. (C.C.P. Section 391.3.) Here, Plaintiffs admit in their First Amended Complaint that
11 each was previously adjudicated to be a vexatious litigant under California law. Therefore, this court
12 should require each Plaintiff to post a security bond with the court prior to being allowed to proceed
13 with this litigation. Given the Plaintiffs' litigious history and the issues resubmitted in this litigation,
14 Defendants request each Plaintiff be required to post a bond with a minimum value of \$10,000. In the
15 alternative, Plaintiffs should be required to show cause why the above-referenced defenses and
16 immunities are inapplicable, how their case has merit and why a bond is inappropriate before this
17 matter is allowed to proceed.

18 **II. Extension of Time to Respond to First Amended Complaint**

19 In addition to the request for security above, Defendants also seek an extension of time to
20 respond to Plaintiffs' First Amended Complaint. As of the time of submitting this Application, only
21 Judge Bertoli, Judge Boyd and the Superior Court of California, County of Sonoma have been properly
22 served.² Defense counsel anticipates that they will be called upon to represent all of the judicial
23 officers following proper completion of service. In an effort to promote judicial efficiency, Defendants
24 respectfully request the time to respond to Plaintiffs' First Amended Complaint be extended until 30
25 days after service of all Defendants is completed. Further justification for this extension is based upon
26

27 ² The requirements for service of Summons in actions against the judicial branch and/or its employees
28 are outlined in detail within Ca. Government Code Section 955.9. Plaintiffs have disregarded those
requirements and appear to be attempting to effect service on the other Defendants through the State
Attorney General's office. Such service is ineffective and improper.

1 the current due date for Defendants' Motion to Dismiss, December 27, 2010, which will create undue
2 burden and difficulties for Defendants as the office is on reduced staffing due to the holidays.

3 Defendants respectfully submit that the above reasons illustrate good cause for the court to
4 extend the time in which Defendants may respond to the First Amended Complaint and file a Motion
5 to Dismiss, as authorized by Federal Rule of Civil Procedure Rule 6(b). Additionally, the time in
6 which Defendants are to respond to the First Amended Complaint has not yet expired, therefore this
7 request is timely.

8 **III. Conclusion**

9 For the foregoing reasons, Defendants respectfully request the court grant this Application and
10 order Plaintiffs to post security prior to this litigation being allowed to proceed. Defendants also
11 request an order extending the time in which all Defendants are allowed to respond to Plaintiffs' First
12 Amended Complaint until thirty days following either: 1) proper service of all Defendants; or 2)
13 Plaintiffs' posting of a bond (whichever is later).
14

15 Dated: December 16, 2010

Respectfully submitted,

MEYERS, NAVE, RIBACK, SILVER & WILSON

18 By: 

19 Kevin E. Gilbert
20 Attorney for Defendants
21 JUDGE JAMES G. BERTOLI, JUDGE
22 ROBERT S. BOYD and SUPERIOR COURT
23 OF SONOMA COUNTY
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DECLARATION OF KEVIN E. GILBERT IN SUPPORT OF EX PARTE APPLICATION

I, KEVIN E. GILBERT, if called upon to testify will competently testify as follows:

1. I am an attorney at law with Meyers, Nave, Riback, Silver & Wilson, attorneys of record for Defendants in the above-referenced litigation.

2. On December 16, 2010 at 1:15 p.m., I spoke with Plaintiff Natalia Sidiakina on the phone and requested she agree to the relief sought hereinabove, including posting a bond and extending the time for Defendants to respond to the First Amended Complaint. Ms. Sidiakina advised that she would not agree to Defendants' requests. In response I advised her of Defendants' intent to submit this Ex Parte Application.

3. On December 16, 2010 at 1:30 p.m., I telephoned Plaintiff Sherryl Baeckel to request her agreement to the relief sought hereinabove. I was unable to reach Ms. Baeckel directly, but did leave a message advising her of the Defendants' intent to submit this Ex Parte Application and requested she contact me. I have not received a return call from Ms. Baeckel as of the time of submitting this Application.

4. I declare under penalty of perjury that the foregoing is true and correct. This Declaration is executed this 16 day of December, 2010, in Oakland, California.

By: _____

Kevin E. Gilbert
Attorney for Defendants
JUDGE JAMES G. BERTOLI, JUDGE
ROBERT S. BOYD and SUPERIOR COURT
OF SONOMA COUNTY

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PROOF OF SERVICE**FRCP RULE 5(b)**

I am employed in the City of Oakland and County of Alameda, California. I am over the age of 18 years and not a party to the within action. My business address is Meyers, Nave, Riback, Silver & Wilson, 555 12th Street, Suite 1500, Oakland, CA 94607.

On December 16, 2010, I served the within:

- **DEFENDANTS JUDGE JAMES G. BERTOLI, JUDGE ROBERT S. BOYD AND THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA'S EX PARTE APPLICATION REQUESTING EXTENSION OF TIME TO RESPOND TO COMPLAINT AND REQUEST FOR ORDER REQUIRING PLAINTIFFS TO POST BOND; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KEVIN E. GILBERT**

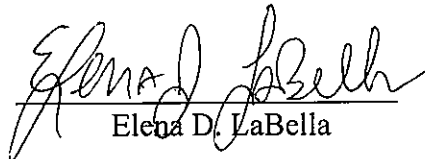
and on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Natalia A. Sidiakina 746 Adobe Drive Santa Rosa, CA 95404	Plaintiff in pro per Telephone: 415.302.9702 Facsimile: 707.538.3729
Sherryl Baeckel 10520 Village Road Moreno Valley, CA 92557	Plaintiff in pro per Telephone: 951.286.0637

(By First-Class Mail) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar with the business practice for collection and processing of mail in this office; and that in the ordinary course of business said document would be deposited with the U.S. Postal Service in Oakland on that same day. I understand that service shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED at Oakland, California on December 16, 2010.


Elena D. LaBella