Injuries that warrant an expedited DNA of John F Kennedy and trial thereof.

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

HILDA T. KENNEDY, Plaintiff, v. THE NEW JERSEY COURT SYSTEM, *et al.*, Defendants.	HONORABLE KAREN M. WILLIAMS Civil Action No. 22-05797-KMW-MJS **OPINION**

APPEARANCES:

HILDA T. KENNEDY
2834 ATLANTIC AVE, APT 815
ATLANTIC CITY, NJ 08041

Pro Se Plaintiff

BARKHA PATEL, ESQ.
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF LAW, TORT LITIGATION & JUDICIARY SECTION
25 W. MARKET STREET
P.O. BOX 116
TRENTON, NJ 08625

Counsel for Defendant the New Jersey Court System

WILLIAMS, District Judge:

I. INTRODUCTION

Pro se plaintiff Hilda Kennedy ("Plaintiff") brings this action against the State of New Jersey Judiciary ("Defendant") alleging that Defendant is in violation of Title II of the Americans with Disabilities Act ("ADA") and the New Jersey Law Against Discrimination ("NJLAD"). Plaintiff alleges that she was discriminated against her on the basis of an alleged disability by the Judges who oversaw her four different lawsuits in the New Jersey State Court system.

On September 28, 2022, Plaintiff filed her Complaint. ECF No. 1. On February 20, 2023, Plaintiff sought to amend her Complaint. ECF No. 11. On March 7, 2023, Defendants filed a Cross Motion and Opposition to Amend the Complaint. ECF No. 15. Plaintiff opposed Defendant's Cross Motion and Opposition to Amend, ECF No. 19, and Defendant replied. ECF No. 20. Plaintiff provided addendum and letters to the Court related to Defendant's reply. ECF Nos. 21, 22. For the reasons that follow, Defendant's Motion is **GRANTED IN PART AND DENIED IN PART.**[1]

II. BACKGROUND

Plaintiff alleges that over the course of four state cases filed between 2014 and the present, Defendant and its employees have discriminated against her because she is disabled.

The first case occurred in early 2014 and stems from Plaintiff's allegation that she was assaulted by a jitney driver. Pl.'s Compl. ¶¶11-12. Plaintiff alleges that Judge Porto discriminated against her in this case when he ignored her request for him to speak "slowly, loudly, [and] clearly" at an oral hearing. *Id.* ¶14. Plaintiff believed Judge Porto denied several of her motions because she is disabled. *Id.* ¶¶14-16. Plaintiff also asserts Judge Porto was showing contempt for the

[1] Pursuant to Local Civil Rule 78.1(b), this motion will be decided on the papers without oral argument.

disabled because she saw him give a "disgusted" look when he heard the settlement amount she received. *Id.*

In her second case, Plaintiff was "crushed" and "run over" by a jitney bus. *Id.* ¶17. Plaintiff alleges that Judge Siracusa discriminated against her because she "permitted an abusive cross examination" of Plaintiff and did not stop the questioning despite Plaintiff's distress, purportedly caused by her disability. *Id.* Plaintiff also asserts that Judge Siracusa's entry of a directed verdict against Plaintiff was based on Plaintiff's disability. *Id.*

In her third case, Plaintiff filed suit based on a landlord tenant dispute that ultimately was assigned to Judge Porto. *Id.* ¶22. Again, Plaintiff alleges Judge Porto discriminated against her when he did not grant Plaintiff's request for him to speak "slowly, loudly, [and] clearly" for her at a hearing and did not allow Plaintiff to speak. *Id.* ¶24. Plaintiff alleges that Judge Porto granted summary judgment against her because she is disabled. *Id.* ¶¶25-28. Plaintiff further alleges that Judge Porto denied her request for a fee waiver to appeal and called her case "frivolous," because she is disabled. *Id.* ¶¶29, 35-36.

In her fourth case, Plaintiff filed a malpractice suit against Cooper Levenson P.A. and attorney Randolph Lafferty, where she asserts Mr. Lafferty is wrongfully withholding her file and cites various other issues she had with his performance. *Id.* ¶¶18, 31. Ultimately this case was also reassigned to Judge Porto who Plaintiff claims denied her request for a stay and her fee waiver to appeal because of her disability. *Id.* ¶34.

Finally, Plaintiff filed appeals in three out of four of her state law cases where she received an adverse ruling and asserts that the over-complicated nature of the appeals process discriminates against the disabled. *Id.* ¶¶17, 30, 33.

On September 28, 2022, Plaintiff filed this case in federal court seeking declaratory judgment to modify or overturn aspects of her four state court decisions and for this Court to find that Defendant is in violation of Title II of the ADA. *Id.* ¶40-I. Plaintiff asks the Court to enjoin Defendant and its employees from engaging in further discrimination against her and other disabled people, as well as require remediation of the barriers Plaintiff identified in her Complaint. *Id.* Plaintiff also seeks compensatory damages. *Id.*

III. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 12(b)(1)

Under Rule 12(b)(1), a defendant may seek dismissal of a complaint based on a court's lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "At issue in a Rule 12(b)(1) motion is the court's 'very power to hear the case.'" *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006) (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). "Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citing *Marbury v. Madison*, 5 U.S. 137, 1 Cranch (5 U.S.) 137, 173-180 (1803)).

When considering a Rule 12(b)(1) motion challenging subject matter jurisdiction, "[a] district court has to first determine . . . whether [the] motion presents a 'facial' attack or a 'factual' attack on the claim at issue, because that distinction determines how the pleading must be reviewed." *Const. Party of Pennsylvania v. Aichele*, 757 F.3d 347, 357-58 (3d Cir. 2014) (citing *In re Schering Plough Corp. Intron*, 678 F.3d 235, 243 (3d Cir. 2012)). As the Third Circuit explained in *Constitution Part of Pennsylvania v. Aichele*:

> A facial attack, as the adjective indicates, is an argument that considers a claim on its face and asserts that it is insufficient to

> invoke the subject matter jurisdiction of the court because, for example, it does not present a question of federal law, or because there is no indication of a diversity of citizenship among the parties, or because some other jurisdictional defect is present. Such an attack can occur before the moving party has filed an answer or otherwise contested the factual allegations of the complaint.

Id. at 358 (citing *Mortensen*, 549 F.2d at 891). On the other hand, a factual attack "is an argument that there is no subject matter jurisdiction because the facts of the case . . . do not support the asserted jurisdiction." *Id.*

The Third Circuit has held that, although Eleventh Amendment immunity is not, strictly speaking, a matter of subject-matter jurisdiction, it nonetheless analyzes the jurisdictional aspects of sovereign immunity under the scope of a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction." *See Wilson v. N.J. Dep't of Corrs.*, No. 16-7915, 2017 U.S. Dist. LEXIS 170321 at *5, *8-9 (D.N.J. Oct. 13, 2017) (citing *CNA v. United States*, 535 F.3d 132, 140 (3d Cir. 2008)). While plaintiff must usually bear the burden of persuading the court that subject matter jurisdiction exists under Rule 12(b)(1), the party asserting Eleventh Amendment immunity bears the burden of proving Eleventh Amendment applicability because such immunity can be expressly waived or forfeited and therefore "does not implicate federal subject matter jurisdiction in the ordinary sense." *Messina v. Coll. of N.J.*, 624 F. Supp. 3d 523, 526-27 (D.N.J. 2022) (internal citations and quotations omitted).

Therefore, in the context of the motions at bar raising Eleventh Amendment immunity as a defense, the Court will review the pleading under a facial attack analysis. *See Fidanzato v. Somerset Hunterdon, and Warren Counties Vicinage 13*, No. 11-5132, 2012 WL 4508008 at *5 (D.N.J. Sept. 28, 2012) ("an assertion of immunity under the Eleventh Amendment is a facial attack on this Court's subject matter jurisdiction"). Therefore, "'the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light

most favorable to the plaintiff.'" *Const. Party of Pennsylvania v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014) (quoting *In re Schering*, 678 F.3d at 243). "[A] facial attack calls for a district court to apply the same standard of review it would use in considering a motion to dismiss under Rule 12(b)(6), i.e., construing the alleged facts in favor of the nonmoving party." *Id.* (citation omitted).

B. Federal Rule of Civil Procedure 12(b)(6)

In deciding a motion to dismiss pursuant to Rule 12(b)(6), a district court is required to accept as true all factual allegations in the complaint and draw all reasonable inferences from those allegations in the light most favorable to the plaintiff, *see Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008), but need not accept as true legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). A complaint need not contain "detailed factual allegations" to survive a motion to dismiss, but must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint "that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do,'" and a complaint will not "suffice" if it provides only "'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 557 (2007)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). A complaint that provides facts "merely consistent with" the defendant's liability "stops short of the line between possibility and plausibility" and will not survive review under Rule 12(b)(6). *Id.* (quoting *Twombly*, 555 U.S. at 557).

A district court may consider allegations in the complaint; matters of public record, orders, and exhibits attached to the complaint are taken into consideration. *Francis E. Parker Mem'l Home, Inc. v. Georgia-Pac. LLC*, 945 F. Supp. 2d 543, 551 (D.N.J. 2013) (citing *Chester County Intermediate Unit v. Pennsylvania Blue Shield*, 896 F.2d 808, 812 (3d Cir.1990)). Thus, generally, a district court cannot consider matters that are extraneous to the pleadings. *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). However, courts may consider documents integral to or explicitly relied upon in the complaint without converting the motion to dismiss to one for summary judgment. *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) (citing *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d at 1426). In this regard, it is critical to consider "whether the claims in the complaint are 'based' on an extrinsic document and not merely whether the extrinsic document was explicitly cited." *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014).

Pro se complaints are liberally construed and "held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). *Pro se* litigants must still "allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013). A *pro se* complaint will be dismissed if "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Mishra v. Fox*, 197 F. App'x 167, 168 (3d Cir. 2006) (quoting *McDowell v. Delaware State Police*, 88 F.3d 188, 189 (3d Cir. 1996)).

C. Federal Rule of Civil Procedure 15

Federal Rule of Civil Procedure 15 governs the availability and timing for amending a complaint. *See* Fed. R. Civ. P. 15. Pursuant to Rule 15(a) a plaintiff may amend their pleading once a as matter of course, but at all other times, a plaintiff must seek leave of the court to amend

their complaint. *Id.*[2] When considering a plaintiff's motion to amend, the Supreme Court has instructed that although "the grant or denial of an opportunity to amend is within the discretion of the District Court, . . . outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely an abuse of that discretion and inconsistent with the spirit of the Federal Rules." *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The Court may deny leave to amend if it is being made in bad faith, for dilatory motive, undue delay, prejudice, or futility. *Id.* (citing *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997)). To assess whether amending a complaint is futile the District Court applies the same standard of legal sufficiency as applies under Rule 12(b)(6). *Id.*

IV. DISCUSSION

First and foremost, a federal district court is a court of limited jurisdiction, and has the power to hear only those cases "within the bounds of Article III and the United States Constitution and Congressional enactments stemming therefrom." *College Sav. Bank. V. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 948 F. Supp. 400, 406 (D.N.J. 1996) (internal citations and quotations omitted). The question of jurisdiction is "so fundamental" that it is a question that the Court must consider even when it is not otherwise put into contention by the parties. *Id.* (quoting

---

[2] Fed. R. Civ. P. 15
(a) Amendments Before Trial.
(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
(A) 21 days after serving it, or
(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

Mansfield, Coldwater & Lack Michigan Ry. v. Swan, 111 U.S. 379, 382 (1884)). Therefore, the Court must address the jurisdictional concerns raised by Defendant because without jurisdiction, the court cannot address any other matters related to the case because such matters would be rendered moot without jurisdiction. *See id.* (citing *Bell v. Hood*, 327 U.S. 678, 682 (1946)).

A. Sovereign Immunity

Because "the Eleventh Amendment is a jurisdictional bar which deprives federal courts of subject matter jurisdiction," the Court will first address the Eleventh Amendment defense asserted by Defendant. *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 694 (3d Cir. 1996). The Eleventh Amendment states that "[t] he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." This means that a federal court cannot have jurisdiction over a state unless that state consents to being sued in federal court. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984). The barrier against suit from the Eleventh Amendment can extend to State agencies acting as "arms of the state," which are defined as entities that, by their very nature, are so intertwined with the State that any suit against them renders the State the real, substantial party in interest. *See Edelman v. Jordan*, 415 U.S. 651, 663 (1974). To determine whether an entity is an "arm of the state" and entitled to immunity, the Court must determine: (1) whether payment of a judgment resulting from the suit would come from the state treasury, (2) the status of the entity under state law, and (3) the entity's degree of autonomy." *Fitchnik v. New Jersey Transit Rail Operations, Inc.*, 873 F.2d 655, 659 (1989). Most entities must affirmatively outline their compatibility with the *Fitchnik* factors, however it is well-established that "state courts, its employees, and the judges are entitled to immunity under the Eleventh Amendment because they are part of the judicial branch of the State

of New Jersey, and therefore considered 'arms' of the state." *Dongon v. Banar*, 363 Fed. App'x 153, 156 (3d Cir. 2010). This immunity is far reaching, but not absolute in that there are three narrow exceptions to Eleventh Amendment immunity: (1) abrogation by Act of Congress, (2) waiver by state consent to suit; and (3) suits against individual state officials for prospective relief to remedy an ongoing violation of federal law.[3] *See Fidanzato*, 2012 WL 4508008 at *6 (internal citations and quotations omitted).

Plaintiff's claims arise under Title II of the ADA and the NJLAD. It is well settled that New Jersey has not waived its Eleventh Amendment immunity for claims brought in federal court under the NJLAD. *See Fidanzato*, 2012 WL 4508008 at *7 (citing *Bennett v. City of Atl. City*, 288 F.Supp.2d 675, 683 (D.N.J. 2003)); *Garcia v. Richard Stockton Coll.*, 210 F.Supp.2d 545, 550 (D.N.J. 2002) ("New Jersey has not stated 'by the most express language' that it is open to private suits under the NJLAD in federal court."). Therefore, all Plaintiff's claims brought pursuant to NJLAD are dismissed based on the application of Eleventh Amendment immunity.

On the other hand, there is a narrow exception to Eleventh Amendment immunity: as pertinent here, Congress abrogated state sovereign immunity under Title II of the ADA, insofar as it created a private cause of action for damages against the States for conduct that actually violates the Fourteenth Amendment. *See United States v. Georgia*, 546 U.S. 151, 154 (2006). Consequently, because Plaintiff's ADA claims are not precluded by Eleventh Amendment immunity[4] the Court must reconcile the viability of Plaintiff's ADA claims with the Rooker-Feldman Doctrine to determine if it can reach the merits of Plaintiff's ADA claims.

---

[3] To the extent that Plaintiff intends to amend her Complaint and raise claims against the Judges as individual state officials for prospective relief to remedy an ongoing violation of federal law, the conduct that Plaintiff complains of is not a continuing ongoing violation in that these decisions that Plaintiff believes demonstrates discrimination by the Judges in her cases are final decisions that she cannot prove under the NJLAD because the Judges are entitled to Eleventh Amendment immunity.

[4] To the extent that Plaintiff intends to amend her Complaint to raise ADA claims against Judge Porto and Judge Siracusa, those claims must be dismissed because the ADA does not provide for individual liability. *See Fidanzato*,

B. Rooker-Feldman Doctrine[5]

The Rooker-Feldman Doctrine prevents "lower federal courts. . . from exercising appellate jurisdiction over final state-court judgments[.]" *See Lance v. Dennis*, 546 U.S. 459, 463 (2006). The only court that has jurisdiction to review the decisions of state courts is the United States Supreme Court. *See* 28 U.S.C. § 1257 ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court[.]"). The Rooker-Feldman Doctrine is specific to cases brought by those who have lost in state court "complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). In other words, this Court cannot "grant the federal plaintiff the relief sought, [if] the federal court must determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual." *Jones v. New Jersey*, No. 13-4485, 2014 U.S. Dist. LEXIS 90315 at *4 (D.N.J. Jun. 30, 2014). There are four requirements that must be met for the Rooker-Feldman Doctrine to apply:

> (1) the federal plaintiff lost in state court;
> (2) the plaintiff "complain[s] of injuries caused by [the] state-court judgments";
> (3) those judgments were rendered before the federal suit was filed; and

2012 WL 4508008 at *7. As discussed, Title II of the ADA does in fact reach past sovereign immunity in that it creates a private cause of action against the States for conduct that violates the Fourteenth Amendment. *Id.* (quoting *United States v. Georgia*, 546 U.S. 151, 154 (2006)). However, to the extent that Plaintiff attempts to state a claim against the individual judges while operating in their official capacities, such claims cannot apply because judges are not "public entities" as defined by the ADA and are not subject to liability under that statute. *Id.*; *see also Emerson v. Thiel College*, 296 F.3d 184, 189 (3d Cir. 2002) (noting "individuals are not liable under Titles I and II of the ADA").

[5] The Court notes that Plaintiff brings up several state court cases in her Complaint. Plaintiff asserts there were two cases related to her tenancy claims, ATL-L-1366-22 and ATL-L-000924-22, which were both heard by Judge Porto. *See* Pl.'s Compl. ¶22; *see Esq. Capital III LLC v. Kennedy John*, No. ATL-L-001366-22, at LCV20222285333 (denying motions to consolidate and transfer the Landlord-Tenant matter to the Law Division) (disposition date June 16, 2022). For clarity, the Court will refer to the tenancy claims cases solely by ATL-L-000924-22.

> (4) the plaintiff is inviting the district court to review and reject the state judgments.

Kajla v. Cleary, 821 Fed. App'x 119, 121 (3d Cir. 2020) (quoting *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010)).

The first requirement of the Rooker-Feldman Doctrine, to have "lost" in state court means that, as a general rule, the federal plaintiff must have been a party to the state court proceeding and received an adverse ruling. *See Merritts v. Richards*, 62 F4th 764, 774 (3d Cir. 2023).

Here, Plaintiff was a party in all of the state cases at issue, and Plaintiff "clearly believes [she] is the 'state-court loser.'" *Harris v. Brody*, 317 Fed. App'x 153, 155 (3d Cir. 2008); *see also* Def.'s Br. Exs. 1-3.[6] To this end, all of Plaintiff's cases satisfy the first requirement of the Rooker-Feldman Doctrine.

In Plaintiff's case related to the assault by the jitney driver (ATL-L-2208-16), the parties reached a settlement, and the matter was voluntarily dismissed. *See* Def.'s Br. Ex. 1; *see also* Pl.'s Compl. ¶16. Although Plaintiff does not directly indicate that she is unhappy with the settlement itself, she asserts that she believed that the legal process leading to that result was rife with discrimination, and thus the judgment was unfair. *See* Pl.'s Compl. ¶¶14-16. In Plaintiff's case where she was "run over" by the jitney (ATL-L-01167-15), Plaintiff alleges that the Judge issued a directed verdict against her because she is disabled, and the appellate court upheld the ruling that the driver was not negligent. *See* Pl.'s Compl. ¶17; *see also* Def.'s Br. Ex. 2. Plaintiff's case regarding her landlord tenant dispute was dismissed on July 20, 2022, and its appeal was denied due to lack of prosecution. *See* Def.'s Br. Ex. 3; *see also Kennedy Hilda v. E.S.Q. Capital III LLC*,

[6] The Court notes that matters of public record, and those documents integral to or explicitly relied upon in the complaint, such as Def.'s Br. Exs. 1-3 and the related public dockets of Plaintiff's state court cases, may be considered without converting the motion to dismiss into one for summary judgment. *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) (internal citations and quotations omitted).

No. ATL-L-000924-22 (case disposition: dismissed by court with prejudice). Lastly, in Plaintiff's malpractice case (ATL-L-3744-21), she asserts that Judge Porto denied her request for a stay pending appeal and denied her order for indigency. *See* Pl.'s Compl. ¶34.

Turning to the second requirement of the Rooker-Feldman Doctrine, Plaintiff's Complaint entirely focuses on her perceived injuries from her various state court decisions. For example, *see* Pl.'s Compl. ¶17, (Plaintiff alleging that Judge Siracusa permitted an abusive cross examination because of discriminatory animus, issued a directed verdict); *see also id.* ¶¶22, 24-25, 27-29, 34-36, (Plaintiff noting that Judge Porto labeled Plaintiff as a "squatter," because she is disabled and intentionally prevented her from being able to appeal her landlord tenant case due to his bias against disabled people). Plaintiff also described the emotional harm of Judge Porto's lack of acknowledgment of her disabilities and his discrimination against her because she is disabled in all of her proceedings before him. *id.* ¶¶14-16, 24, 26-29, 34-36. Thus, all of Plaintiff's state court cases meet the second requirement.

The third requirement of the Rooker-Feldman Doctrine requires the Court to determine if the state court judgments "were rendered." This Circuit requires that the result of the state court action be "effectively final" before the institution of the federal suit to qualify for the application of the Rooker-Feldman Doctrine. *See Merritts*, 62 F4th at 776-77. The "effectively final" standard is a "waive-or-exhaust" rule for federal claims in state courts, where a state court judgment becomes effectively final in three ways:

> 1) the highest state court has issued a terminal ruling;
> 2) a lower state court has issued a ruling for which the time to appeal has expired or the parties have voluntarily terminated the case; or
> 3) all questions of federal law have been resolved by the highest state court.

See id. at 777 n.8.

Here, not all of the judgments of the state court cases cited above were rendered prior to this case's filing on September 28, 2022. Plaintiff's first and second cases were adjudicated before the start of the instant case, and her third and fourth cases were not.

Plaintiff's first case settled on May 24, 2019. *See Kennedy Hilda v. Zaman Mohammad*, No. ATL-L-2208-16 (case disposition: dismissed by court with prejudice). Plaintiff's second case went to trial, which was completed on September 5, 2017. *See Kennedy Hilda T v. Pollock Frederic A*, No. ATL-L-001167-15 (case disposition: tried to completion with jury). The appeal of Plaintiff's second case was decided on December 20, 2019. *Id.* at LCV20192349240. In the New Jersey State court system, the deadline to apply for an appeal is 45 days after the signed final judgment is filed. *See* New Jersey Court Rules 2:4-1: Time for Appeal: From Judgments, Orders, Decisions Actions and From Rules. Plaintiff filed the instant case on September 28, 2022. Therefore, Plaintiff's first and second cases satisfy the third requirement because these matters were beyond the 45 days permitted to appeal prior to the federal case being filed.

On the other hand, Plaintiff's third case was closed following the Court's denial of a Motion for Reconsideration on July 20, 2022, and Plaintiff's appeal was denied on December 14, 2022, almost three months after the instant case was filed. *Kennedy Hilda v. E.S.Q. Capital III LLC*, No. ATL-L-000924-22, at LCV20222699748 and LCV20224218300. Plaintiff's fourth case is ongoing.[7] Therefore, Plaintiff's third and fourth cases do not satisfy the third requirement because neither case received an "effectively final" judgment prior to Plaintiff filing her federal case on September 28, 2022.

In relation to the fourth requirement of the Rooker-Feldman Doctrine, Plaintiff's requested relief requires this Court to review and reject the state court judgments. "This condition is satisfied

[7] As of September 18, 2023, the parties are participating in discovery. *See Kennedy John v. Cooper Levenson Law Firm*, No. ATL-L-003744-21, at LCV20232874203.

for claims that seek to determine whether [the state court] reached its result in accordance with law or to have the state-court decisions undone or declared null and void." *Merritts*, 62 F.4th at 777. In all four cases, Plaintiff asserts that the results reached were somehow unlawful, and thus all four of her cases satisfy the fourth requirement of the Rooker-Feldman Doctrine.[8]

Because the Rooker-Feldman Doctrine only applies when all of its requirements are satisfied, the only cases that do not satisfy all four requirements and therefore are not barred by the Rooker-Feldman Doctrine (as they relate to Plaintiff's ADA claims) are her third and fourth cases. Plaintiff's third case regarding landlord tenant claims (ATL-L-000924-22) is not barred by the Rooker-Feldman Doctrine because the denial of her appeal came after the filing of the federal case and Plaintiff's fourth case regarding malpractice claims (ATL-L-3744-21) is not barred because the case is still ongoing.

The question of whether her ADA claims can survive a motion to dismiss is not before the Court today, and recognizing this, the Court grants Plaintiff the ability to amend the complaint to clarify her ADA claims arising solely from her landlord tenant case (ATL-L-000924-22) and her malpractice action (ATL-L-3744-21) if she so chooses.

The Court acknowledges Plaintiff's frustration with the procedures and policies in place within the New Jersey state court system and notes her efforts to bring her experiences to the attention of others. However, this Court is bound by its jurisdictional limitations, the Federal Rules

[8] For example, Plaintiff requests a declaratory judgment that states that her case before Judge Siracusa (ATL-L-1167-15) should have been granted a new trial based on preponderance of the evidence. *See* Pl.'s Compl. ¶40. Plaintiff also wants compensation for the discrimination she has faced during her various legal battles, which would implicate the settlement involving the assault by a jitney driver (ATL-L-2208-16), as the Court believes she is asserting that the judgment was unfair due to the presence of discrimination and bias. *See* Pl.'s Compl. ¶¶14-16, G. In Plaintiff's landlord tenant matter, Plaintiff seeks a declaration that "the [state] court does not have personal jurisdiction over [her]" as well as other relief. *Id.* In Plaintiff's fourth case (ATL-L-3744-21) she asserts that Judge Porto is intentionally preventing her from filing appeals by denying her Orders for Indigency, among other claims. *Id.* at ¶34. Therefore, all of Plaintiff's state cases clearly fulfill the fourth requirement of the Rooker-Feldman Doctrine.

of Civil Procedure, and the precedent as discussed in this Opinion. Simply stated, this Court does not have the power or authority to address the Plaintiff's NJLAD claims and may only grant Plaintiff the opportunity to amend her Complaint to the extent noted herein.

V. CONCLUSION[9][10][11]

For the reasons set forth above, Defendant's Opposition to Plaintiff's Motion Seeking Leave to Amend and Cross Motion to Dismiss Plaintiff's Complaint is **GRANTED IN PART AND DENIED IN PART**. Plaintiff's claims arising under the NJLAD and Plaintiff's ADA claims stemming from her first (ATL-L-2208-16) and second (ATL-L-001167-15) state court cases are **DISMISSED WITH PREJUDICE**. Plaintiff may amend her Complaint to clarify her ADA claims arising solely from her landlord tenant (ATL-L-000924-22) and her malpractice (ATL-L-3744-21) state court cases if she so chooses, within 30 days of the issuance of the order consistent with this Opinion that will be entered.

September 29, 2023

KAREN M. WILLIAMS, U.S.D.J.

[9] To the extent that Plaintiff's Complaint seeks relief due to the actions of various attorneys, this Court cannot provide such relief because those attorneys are not parties to this action. *See* Pl.'s Compl. ¶40.

[10] To the extent that Plaintiff intends to amend her Complaint to bring claims against Judge Porto and Judge Siracusa in any other capacity, judicial immunity would apply. Judges are absolutely immune from suit when they act in the performance of their duties. *See Kajla*, 821 Fed. App'x at 121. "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id.* (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)) (other internal quotation marks omitted). The characteristics of whether an act by a judge is a "judicial" act that is protected by immunity are related to the nature of the act itself, (whether it is a function normally performed by a judge), and to the expectations of the parties, (whether they dealt with the judge in his judicial capacity). *See Stump*, 435 U.S. at 362. Here, the complained-of acts all relate to the judges in how they conducted their various cases where Plaintiff was a party, which is precisely the action that judicial immunity is applicable to, and the fact that Plaintiff insists that their decisions were done in error or through discriminatory motive cannot overcome judicial immunity. *See Kajla*, 821 Fed. App'x at 121.

[11] To the extent that Plaintiff also seeks to create a class action through the amendment of her Complaint, the motion must be denied. *See* Pl.'s Motion to Amend at 16. Here, Plaintiff cannot satisfy the prerequisites of Rule 23(a) because pro se plaintiffs cannot adequately represent a class because pro se litigants may not appear as an attorney for others. *See Blue v. Def. Logistics Agency*, 181 Fed. App'x 272, 275 (3d Cir. 2006).

HILDA T. KENNEDY,

Plaintiff, v.

THE NEW JERSEY COURT SYSTEM,

Defendant.

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE

Hon. Karen M. Williams,

U.S.D.J. Civil Action No. 1:22-cv-05797-KMW-MJS

December 8, 2023.

(Electronically Filed)

THE PLAINTIFF'S HILDA KENNEDY FIRST AMENDED VERIFIED COMPLAINT, DECLARATORY AND INJUNCTIVE RELIEF WITH JURY DEMAND

PARTIES

1. I am the plaintiff Hilda T. Kennedy. I and my husband are both legally disabled. This qualifies me and my husband for Americans with Disabilities Act (ADA) protection because we have physical impairments that substantially limit major life activities; major life activities include but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, speaking, eating, sleeping, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating, and working.

2. I have no criminal record whatsoever.

3. I am legally blind and 91 years of age at the time of this filing.

4. I, Hilda Kennedy, the plaintiff had various catastrophic injuries that were painful, and life-threatening. My disability did not allow me to get due process, equal protection, and benefits, rights, and privileges that others in my state enjoy from the defendant. I was subject to and targeted for harassment, embarrassment, abuse, torture, retaliation, and ridicule for my disability by the defendant and its agents and its sub-agents (officers) which ultimately punished me for existing and denied me any justice or relief from the defendant whose practices locked the door to my usage, defense, and protection of my original rights. I was denied access to all my rights, the basic/original rights relief by the defendant for the sole reason that *I am, I exist*.

5. The defendant: THE NEW JERSEY COURT SYSTEM is the Defendant, it's *about* online:
"As discussed in the biographical sketches of the Chief Justices contained in this website, Arthur Vanderbilt was the indispensable bridge between a court system that worked only for political insiders to one that became a role model in the United States.

The basic framework of New Jersey's court system prior to 1947 was created during the colonial era and prevailed for nearly two centuries. On July 2, 1776, the day that New Jersey's provincial congress ratified the Declaration of Independence, it also approved our first constitution. Working in the shadow of war, the committee hastily crafted a document transferring all the powers of the royal governor to the legislature, making the new governor a mere figurehead, and creating s court system akin to Great Britain, but dominated by the legislature. Despite the 13 years between the adoption of the Revolution-era constitution, and the new U.S. Constitution in 1789, no thought was given to taking a second look at the original charter. The state's constitution was so poorly drawn that it drew the attention of James Madison who cited New Jersey's constitution as inferior in Federalist Papers #47, warning: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The result was a court system dominated by politicians with no regard for the rule of law.

Calls for revision of the constitution in 1790, 1797, 1819, 1827, and 1840, all failed. Finally, in 1844, a constitutional convention proposed a new constitution which was approved by the voters. Yet even then, little changed, particularly the courts, which grew more chaotic and corrupt.

Following the turn of the 20th Century, and as other courts across America were being reformed to keep pace with the modern world, "Jersey justice" was the label attached to the rickety, corrupt conglomeration of courts that legal scholars and historians alike cited as the most archaic judicial system in America. As shown by the pre-1947 chart, our court system was so antiquated and incoherent that only the well-heeled, armed with politically connected lawyers, were confident of fair treatment. For anyone else, beware.

After more than two decades of battling, Arthur Vanderbilt and others had built a strong coalition of supporters from the legal, political and social communities, resulting in the approval of a June 1947 referendum providing for a constitutional convention convened at Rutgers University. The result was a modern unitary court system insuring accountability, coherence and respect for litigants." *https://www.njcourts.gov/courts/virtual-museum/pre-1947-constitution*

The defendant's primary rule is justice.

HISTORY

6. In 2014, I was assaulted by Mohammad Zaman in his jitney because I did not sit down fast enough while he was driving away. As he started to move the jitney I was not seated so I fell. He then banged my head against the floor of the bus which was caught on surveillance video. An ambulance had to get me to the hospital from inside the jitney. I then hired a nice attorney, Mr. Hyman Lars.

7. About a month later I was injured by Fredrick Pollock's 14,000-lb Jitney in Atlantic City, NJ coming home from shopping with my husband for Thanksgiving dinner. The driver missed our stop and dropped us off at an undesignated stop in a storm. He left a gap between the curb and the bus that I fell into. I was 86 years old and spent over 6 months in the hospital; I was in Intensive Care for more than a week with a punctured lung, heart, and fifty broken bones, mostly ribs, and shoulder in unusual places. I underwent immediate surgery by a Walter Reed military surgeon who saved me by his training.

8. The incident took my family's spirit, and money and turned me from flesh and bone to deformed flesh and metal with constant pain, and more disabled. I think about both these things and cry because it is against the law. Even though these incidents are not part of this case here I need them clarified for what happened next for the court to see what this complaint is for as they are connected to my malpractice case which is subject to this lawsuit.

9. According to the accident expert in the Pollock case, it was illegal to leave such a gap to avoid just such an injury, *and* the driver did not look through the rearview mirror because if he did he would have seen me in the flooded gutter. <u>The driver must not move</u> <u>his vehicle</u> because I could not be in two places at once even if he thought I was, otherwise: *He is at fault.* There was no expert to challenge this.

10. Mr. Pollock wrote he heard a banging on his bus's side (It was my husband when I was down in the flooded gutter stopping the jitney) in his interrogatories before his hasty death. My husband was the hero who saved me from drowning whilst being completely crushed between the curb and the bus.

11. The above should have been the end of the story for a jury in both cases with a surveillance video. Most people asking and answering what happened next themselves believe it is an open and closed case for both incidents: I should have lived my life in peace, recouping my retirement fund, being able to pay for help for my injuries, and being compensated for my pain by the insurance company. Medicaid would have its $500,000. I wouldn't have been tortured further. But no.

12. While I was in the hospital my husband with our son, who returned and delayed his marriage overseas for us, rented an apartment whose realtor had an attorney spouse who requested to meet me.

13. This attorney arrived at the hospital with pen and contract in hand and impressed himself upon me 'he to go all the way and do justice for me, easily'. He told me negative things about the other attorney; He convinced me from his promises that I should give him both cases. The other attorney would be fine with it, he said, as they were friends, he would understand. I thought attorneys were honest, generally, because of the rules of the Bar Association. I did not think lawyers would do badly without an understanding of right and wrong and the consequences. He said he would give Mr. Lars fifty percent of his share, which I thought was nice. This attorney must be great.

14. At trial in the Pollock case, noticing the trend of lack of care in my deposition, the opposition took advantage of me and asked me several times in different ways: What is the distance between me and the curb? Naturally, I could not say to save my life. This inconsistency was straightforward, even to a good-smart-minded jury. I think that when a jury believes you are lying, they punish you for it. It seemed as though I was lying, but this kind of questioning which the defendant's agent allowed was wrong in itself and my attorney erred. It is harassment for my disability (trial by torture) which is against the federal law for Americans with Disabilities for good reason.

15. Then the defendant's agent went so far as to change the jury instruction without unilateral permission and turned it into a directed verdict which by the tone of her voice was also discriminatory. No objection from my attorney.

16. The lawyer and his law firm subject to the malpractice case did not file anything to protect me from discrimination or preserve my rights on appeal. The lawyer did not file a motion for a retrial for the preponderance of the evidence, oppose the other attorney's harassment of a disabled person or the defendant, make a motion for a directed verdict, or apply in federal court for ADA violations before a decision was rendered, nothing. I lost my rights and ultimately the case and the appeal.

17. This attorney, and law firm in their quest for quick, easy money and bizarre understanding that it should not challenge other attorneys except to get clients was not operating properly for me, a disabled person. They lost for numerous reasons are malpractice. More, they did not see the simplicity of a no-defense case, with video, and renowned experts. (1) They did not defend me zealously as a matter of law as a disabled person. (2) They failed to tell me the truth about my appealability to deny me my rights in both cases; (3) They lost by not saving my defenses on appeal. They even failed to get the video in the Zaman case and attempted worse: They requested that the defendant be allowed to be removed from the lawsuit alleging to the defendant agent that my attorney unbelievably had personal knowledge that my husband and I were lying in an *in limine* motion (?).

18. I appealed the Pollock case with my husband. It took me two-three years from 2017-2020. An excessive amount of time that should have been less.

19. I tried to do the Zaman case with my husband but the agent of the defendant continued in the discriminatory practices. I was too scared, humiliated, embarrassed, and tortured to go further with the defendant's agent. I am only human. I settled early but had peace of mind. The opposing attorney told me a mock trial I always came in with at least or more than $100,000 because of the lost video and your injury but he was only allowed to provide me with $30,000 now. I had to pay medical bills and court costs so it was significantly less from 2014 to 2019.

20. I have been so afraid of the defendant's agent that I was hospitalized before an oral argument. I withdrew one case he was assigned to, settled another before seeing him to not see him.

ALLEGATIONS

21. In New Jersey only when an appeal has ended negatively can a person sue for malpractice after an expert report shows you had a cause of action to sue the attorney for malpractice and the loss he incurred. The money for the expert report was no easy task. I accomplished it though.

22. It should not be any simpler though. The attorney did not represent me as he should. He did not prepare me, missed deadlines, lied, and let me be tortured without a heart or protection on the stand, allowed a directed verdict, and due to all this and more, anyone can see I would have been compensated for an injury which by even the minimum standards I was entitled to because of the negligence of the driver. The driver is deceased and his defense had no expert or excuse: To be "hit by a bus" is one of a small list of accepted prayers for injuries you could wish for someone you hate. I was crushed by a bus at over 86 years old. I do not wish it on anyone, even the worst person, even before my injury.

23. At the same time, the malpractice case was going on. My new landlord did not want to accept my lawful income from my disability so I filed an action in state court using the federal Fair Housing Act et al.

24. The defendant's agent, the same one from the Zaman case who denied my repeated, documented requests to speak slowly, loudly, and clearly and caused me to settle because of his humiliation was assigned to me by the defendant in a Fair Housing Act violation claim (ATL-L-924-22). He took over another case (ATL-1366-22) and combined them together. He dismissed both before they began. He did not file my requests to speak slowly, clearly, loudly, and did not listen to me in oral arguments at all. He ignored all my requests. He did not follow the rules of the Court for New Jersey. I was also denied my fee waiver, even though another judge in the same courthouse granted it and he allowed the other party to proceed without paying filing fee costs without a fee waiver in ATL-L-1366-22.

25. I could not appeal because the process was too difficult. I became sicker. It was also humiliating and torturous (I had to travel 4 hours to and from court, over and over again because they kept losing the filing if I didn't get it stamped.).

26. My husband and I became ill from all this, together, from fear.

27. *Then the same agent of the defendant took over my malpractice case.* It felt like he was chasing us. I was denied a STAY from him repeatedly, just ignored. He again in ATL-L-3744-21 denied my fee waiver to appeal.

28. This time, the third-fifth time, I was not going to cry, suffer, or be homeless without a family and die in misery without trying to get help from the federal courts. I sued the defendant in this action for federal relief. I have suffered for a denial of duty owed me, and my original rights which are not protected by the state, but by the federal judiciary.

29. I have helped those who suffer too and I know it is the person who does something the one whose responsibility it is to do something for themselves. For some the spirit is willing but the body is weak. This should be the case for me to be a broken person but I have a family to take care of. We have come too far to go backward for the defendant who violates the law like it is a sport to back. I paid my week's salary for the kids to go to the March on Washington and they did it, my parents taught me too. I am here now.

30. The defendant's agent took over Atl-L-924-22, Atl-L-1366-22, AtL-L-8989-22, and AtL-3744-21 in three months. At that time, the agent of the defendant issued three dismissals against me in violation of the New Jersey Rules of Court; he issued eight (8) fee waiver denials against my cases for which he ruled and knew or had cause to know each was being appealed from *his order* yet he stated case(s) were all frivolous as this court can see is wrong. He would have kept going to.

31. The defendant's agent denied me access to court and the appellate court made it too difficult to access court by not implementing any ADA Title II measures that would avoid both these actions through remedies for disabled people like in schools.

32. The defendant's agent(s) in my repeated requests for extra assistance denied them all at both levels of the defendant's institution. Not one request to the order of "please speak slowly, loudly, and clearly" or any complaints filed by me were honored but ignored.

33. As an example, the defendant's agent went further and hung up on me when I was attempting to explain that the ATL-L-1366-22 was a non-existing case when a conference call was made for ATL-L-924-22. This is something that exemplifies the illegal nature of the agents' actions and consciousness of guilt.

34. My condition above is a nightmare for a disabled person. It is undignified and contentious to the United States constitutional protections and federal law thereof.

35. It has been difficult for a person like me to speak to someone for help with the defendant. The police and attorney general's office protects the defendant and does not investigate it. The forms and filing rules are not easy to use and require dozens of deficiencies to be fixed for a disabled person which I have experienced in ATl-L-924-22 & ATL-L-1366-22 and in ATL-L-3744-21 and others which are not part of this case.

36. Most colleges under ADA Title II have special offices to help students with disabilities. It may be called "Center for Disability Services" or "Office of Student Disability Services" or some similar name. "Contact them when you are applying for admission or if you are already a student who needs assistance." Nothing like that existed in the defendant's place of business for me when I was appealing. I do not even have access to ECF filing by someone at the court by email or to see my case online by the defendant.

37. As a disabled person seeking to file, I fully expect to be lugging around two suitcases that weigh 200 lbs. of paperwork for my appeal in my wheelchair which is costly. I could never afford to mail it because I am disabled and 91 years old and cannot just go and get a job after nearly losing my life and losing my savings over and over again. Due to inflation: I am priced out of an appeal just as I would be from basic transportation if not for taking a bus at a reduced fare and getting accesslink to those hard-to-reach locations. No concern for my cost of printing and filing is considered by the defendant. I cannot enjoy the same benefits that other people who are not disabled enjoy from the defendant because of my disability expenses above everyone else.

38. The agent of the defendant is making it so I would have to pay for multiple appeals intentionally causing me higher costs.

39. According to the rules of the court, I cannot use audio in any appeal because it is not allowed at all but it is needed to prove the tone of the voice of the agent of the defendant and how demeaning, dehumanizing, and discriminating it is.

40. ADA Title II of the Americans with Disabilities Act (ADA) in schools protects people with disabilities from discrimination in real time. It provides Assistive listening systems; Audio recordings; Braille materials; And Computer programs (for ease of doing something) and it allows for the Substitution of specific courses required for the completion of degree requirements; Providing written outlines or summaries of class lectures (akin to simplifying what will happen or could happen or has happened); Extended time for testing, and much more. None of these are available to me by the defendant in my appeals for the aforementioned cases. I could use the audio recordings of the rules, and computer programs with the case in controversy here with happiness.

41. Another type of reasonable accommodation is a modification of a school policy or procedure. Schools are *required* to do this when necessary to prevent discrimination against a student with a disability. Modifications will always vary based on the student's individual needs.[1] None of this is done by the defendant.

42. Easy to understand, cost reduction, ease of filing, filing complaints, squashing outright discrimination, torturous events for the disabled in reviewing your case by a case by case basis, assistance, real-time solutions for instant relief of rapidly changing barriers become in compliance to ADA Title II for a disabled person by the defendant to protect the protected class is essential to human dignity and it is the law. I was a poll inspector in my seventies and eighties and I know real time solutions help in the voting process because the solution is that day not tomorrow.

43. There is no way to complain about any agent of the defendant within the defendant's toolbox as was explained by the clerk of the defendant when I was being harassed, humiliated, and tortured. As an example, nothing the defendant has is fast enough to stop me from being forced to leave my apartment after filing the papers, and in retaliation. I am denied due process and equal protection which would deny me the monetary benefits from the CARES act for my disability in ATL-L-924-22 and any hope for that case was squashed in the delay and complexity of the appeal from homelessness especially when I am being denied a fee waiver.

44. Being homeless is not magic. The money from the CARES ACT saved me from being homeless after so much but it doesn't stop the defendants' agents from blowing out that candle of aid intentionally. And it doesn't stop the defendant's agent from retaliating against me for seeking protection from that principal right. The fact that the defendant is not in compliance with ADA Title II doesn't give pause to anyone attempting such a denial, especially an agent as notorious as this one who facilitates this abuse and is my cause of action, why?

[1] **https://www.disabilityrightssc.org/the-rights-of-college-students-with-disabilities-2/**

45. The law says that to have a viable retaliation case, you must have a sufficient linkage between your protected activity (here filing a state case for FHA and a federal complaint) and the adverse action you endured to deprive you of property in further retaliation of their federal court filings, which is called a "causal connection."

46. If schools have implemented ADA Title II in such a broad manner which affects thousands of schools, colleges, and universities, the defendant, who knows better, should have an easier time at it. The defendant's institution is not at risk of being destroyed. The defendant is the one tasked with making sure other institutions follow what it does not follow itself. But failed miserably in defending my Fair Housing Act rights as an example.

47. Schools and the defendant are a "work" and a merit-based system. The only difference is that the defendant is the gatekeeper of the basic original/basic/principal rights of the disabled, and it has a higher propensity to cause catastrophic injuries such as homelessness, loss of property, loss of benefits, family, health, and even property, life and liberty. The schools do not cause you to be hurt like that, lose your family, or not receive medical care if you don't get your test with a bigger print or ask and are denied for someone to speak slowly, loudly, and clearly for instance. If you are right you are right you get your degree or in this case judgment.

48. The fear of being homeless, because my basic/principal rights are lost, makes me scared. I am ripe for abuse due to the defendant's lack of care for a duty owed by them to me which they flaunt as true.

49. "Title II of the Americans with Disabilities Act (ADA) protects people with disabilities from discrimination by state-funded schools such as state universities, community colleges, and vocational schools. If you feel that a state-funded school has discriminated against you because of your disability you may have a claim under Title II of the ADA. Students with disabilities at private colleges, universities, and other schools are protected from discrimination by Title III of the ADA which covers places of public accommodations."

50. Equal protection and due process by way of the ADA Title II protections start with access to the defendant's institution, not repeated denials in a discriminating arbitrary rule change, pricing out of court, frustration, and torture for one's disability, the opposite of the law or welcomeness of justice: Unreasonable like OZ's requests in the Wizard of OZ. "A case does not have only one viable theory or even the best theory… it just has to be a version that a reasonable juror potentially could adopt. Or "a reasonable juror could certainly view Plaintiff's complaints as an insincere attempt to salvage a bad complaint" but that same juror "could also reasonably infer that Plaintiff's complaints about his illegal led to damages."

51. In ATL-L-924-22 I requested that the ATL-LT-924-22 case which had issues of more complexity than a simple landlord-tenant case for non-payment be moved to the law division, because of the lawful income compliments, but it was denied in both the landlord-tenant court and law division. To give an example of lack of care, one of my filings was labeled ATL-L instead of ATL-LT so it was placed on the docket as a law division case under ATL-1366-22 instead of the landlord-tenant division which was approved because the agent of the defendant allowed it so as to dismiss it with prejudice.

52. Ironically, the agent of the defendant assigned to the case (Atl-L-924-22 and Atl-L-1366-22) did it fast that the original agent assigned to that case was never removed from the docket. He ruled as a summary judgment in that case in favor of the defendant with a fee waiver without filing a fee waiver only when it went against me, the disabled person. And it was not asked to be repaid?

53. I was denied a fee waiver as frivolous by the agent of the defendant. Yet, I, a disabled person, living below the poverty line..... I had to pay to appeal for a case but the other party, a business never paid the case in ATL-L-1366-22 and was not denied a fee waiver or required to do one at all. How is this possible? A clearer prejudicial situation denial to access court does not exist in ADA Title II in New Jersey by the defendant's negligence. The defendant acts as if he does not understand my situation but gives me no tools to understand me.

54. What is worse, just as the clerk of the defendant wrote in one of the attachments, *the record has been altered*, and no complaint process exists. *It not just that one filing that has been altered. And the fact that when I complained I was physically harassed, at 91!*

55. I believe that certain people must have immunity for sure, I am grateful for what system I have in the United States. It is by far not a myth that the entire world thinks the United States is just beyond reproach. Compared to a hundred years ago to a hundred and fifty years ago it just gets better and better. I fully expect it will be better ten years from now. And that stems from what work you put into it. These laws didn't appear by wish but by hard work and an open mind. Their implementation is similar. Ignoring issues makes things worse because no one wants to pay a pound of pain for an ounce of prevention, get injustice. The people of New Jersey strive to avoid injustice more than other countries without a doubt. Their efforts hindered within is not right. It hurts me to do this but it hurts me more when something I love and respect fails me causes me pain and scares me in such a way as to want to die. I am very comforted that the solution is so simple and the benefits that will befall from pointing out this issue and having it resolved will help all those New Jersey voters. Most people will become disabled someday but that doesn't mean they should then be able to get help in getting a good education with due care yet die by the defendant's lack of legal responsibility. People need guidance, believe it or not, it is the same guidance that causes someone to be mean as it is that causes someone to be nice and helpful. People naturally like to be nice but have the predisposition to be able to be mean for self-preservation. Otherwise, no one would be a good parent or want children.

56. I was going to be homeless because of summary judgment. The agent of the defendant said to me by phone, a 90-year-old woman, a legally blind person, who is entitled to CARES ACT aid in an anti-eviction state, in a tone that I will never forget, "What do you want? To live there forever." I thought to myself, no, but while I qualify for financial support, and benefits because of the Anti-Eviction Laws of New Jersey and the CARES ACT I should not be evicted but I could not speak fast enough due to my disabilities which contribute to my mind's slowness.

57. In ATL-L-3744-21. I believe hurt me the most because the agent of the defendant by court Order made me answer an interrogatory which I attempted to tell the agent I already answered. By court order I was forced to answer for the third time, "Do you have a criminal record?" It reminded me of the "How far is the bus from the curb?". By Court Order, I was required to provide the defendant with a work history for my entire life and my husband too. Then I was denied unsealing my records. How many disabled persons remember their 80-year work history? I had already provided the opposition with a twenty-year work history.

58. The defendant's agent was wrong in ATL-L-924-22 where the summary judgment ORDER is against the CARES ACT lawful income under FHA protections. My rights were thwarted, simply erased. The Order read I must be evicted for non-payment of rent in landlord-tenant court despite my aid in the anti-eviction state. -If not for a young attorney who who dared to explain the Order was wrong to an agent of the defendant in his first case (I begged him to do it) My eviction, my life gone. He worked for a South Jersey Legal Aid Lawyer former Police Officer from a poor neighborhood. He dared to help me and my family from being eviction (Thank you). I would have died.

59. Hiring a million extra attorneys is not the solution. The solution, that would make me whole is implanting the ADA Title II mandates that disabled students enjoy preventing such a thing as my horror show and granting me my relief. Otherwise, the bad actors and their attorneys or the system who use this gap created by this negligence will prosper in the abuse of people with disabilities, and people with disabilities "beware." If the defendant wanted to fix the problem like other entities that it oversees, they would have done so already.

60. My husband and I were hospitalized. I was a wreck. I had hypertension and high blood pressure, my husband had a heart attack, kidney failure, and syphilis..... I had to sleep on the hospital couch at 90 years old until I too was hospitalized something that could have been avoided. Appeals were impossible, unobtainable, and torturous to the point of intentional harm to a disabled person. A notice of appeal should be one, two, three, not zero, zero, zero.

61. The notice of appeal was impossible to do correctly because my disabilities became worse as a legally blind person who trembles increasingly and it was always sent back after eight hours of travel to get it stamped. My efforts to get my rights were thwarted by the agent of the defendant and the defendant in any way possible as this court can see -in violation of ADA Title II, and for violations of it.

62. The same agent then dismissed my malpractice case as the court could see too, whilst ignoring my request for a STAY, and denied my fee waiver again and again.... increasingly. It felt as though the defendant's practices and work environment made following ADA Title II so lackadaisy that my pronounced rights were blatantly ignored with ease, even joy. It was as if throwing a rock at me for my disability to get me out of the defendant's institution -The defendant like a voting institution must be inclusive, not exclusive. Every right begins with access to the defendant's institution. It is the standard for constitutional rights through ADA Title II law but fails miserably.

63. The lack of randomness and exclusion by the same discriminating agent allowed him to enter cases to deny me access to the court, over and over again.

64. Many situations that happened to me were not objective but rather discriminatingly subjective (fee denial when the court could have allowed me to access court based on my disabilities because I have more costs, granting fee waivers without forms for non-disabled entity [ESQ CAPITAL] and fee denial when another judge in the same court gave me one in an objective manner).

65. Objective means verifiable information based on facts and evidence. Subjective means information or perspectives based on feelings, opinions, or emotions. ADA Title II means giving a disabled person access under both scenarios to have the same benefits others in the state have.

66. The defendant, and agents of the defendant and its other agents (lawyers) commonly use this or similar <u>often</u> against the population of New Jersey that is like your plaintiff, disabled:

"*Pro se* litigants, like the Plaintiffs, are not relieved of their obligation to comply with court rules." True, however, not all *pro se* litigants are created equal, a protected class, disabled, or two out of three. <u>All</u> must not be put in one discriminatory box by law and subject to constant embarrassment, humiliation, and torture as if everyone is the same[2]. If the NJCS, a state-funded institution, expects this by *its* mandate, it must provide the tools and resources needed and required by ADA Title II for people with disabilities as other institutions of lesser, equal, or greater character, similar. Schools that live up to the same demands as the Defendant does. The defendant NJCS is not at risk of disappearing by doing this just as schools, colleges, and universities. Schools must provide and give the tools to make their studies accessible so too must the NJCS make itself accessible to disabled people to receive the benefits others in the state enjoy. Like but not limited to equal protection, and due process rights (and even other rights like plaintiffs' attempt to access the Fair Housing Act right) derived from the United States Constitution and required by the state to give to all its citizens.

67. In this case, the defendant has caused the plaintiff harm by negligence in NOT adhering to ADA Title II to the fullness of the law and its requirements despite the plaintiff's complaints to that effect. Its actions are unconstitutional in combination with ADA Title II, plain and simple.

[2] The plaintiff knows of many people including herself that would rather not be subject to embarrassment, humiliation, and torture.

68. The agent of the defendant denied me an amended complaint even though I am disabled in a Fair Housing ACT claim for CARES ACT benefits for not accepting lawful income based on my disability or cooperating with the requests from the state agency, providing/accepting a lease in declarative judgment, and harassment for several illegal reasons.

69. The same agent of the defendant entered five cases of mine some from other agents' mid-stream, three in three months; he denied me eight fee waivers while another judge in the same court granted me, and the same agent granted summary judgment without a fee waiver or the filing of a fee waiver, and did not allow me notice of a summary judgment whilst accepting the oppositions claim for undisputed facts. enjoy. Several STAYS were just ignored, papers not filed, calls not returned. I was forced to take photographs from the defendant for my records in their office, and I was not allowed a Ferra Conference within 90 days after the opposing party answered (**3.8.2022**) the complaint inATL-L-3744-21 and that request was ignored not once but multiple times which is mandatory by the defendant's own rules. Three of my cases were dismissed by the agent of the defendant.

70. My appeal was impossible, as it was just impossible for me.

71. I was humiliated, tortured, scared, sad, and suffered negligent emotional distress. People in schools and universities benefit from the ADA Title Ii that helps them benefit from the state programs -not a defendant but it enforces that law. Between the defendant and I, I was not allowed to benefit from my benefits as others in the state are because I am disabled from the defendant who is the gatekeeper of these principle/original/basis/base rights

72. I do not want to be treated this way (tortured/crying all the time) and killed by the defendant's negligence which punishes me for seeking my legal rights for my disability for years now. I spend more time writing motions to get basic rights and defending motions than others in a discriminatory Casim insulated from complaints and recourses just because I am disabled. Whereas others go to court abc.

73. The defendant's counsel, the New Jersey Attorney General, is welcome to check, command to investigate, and contradict me if any of my allegations are incorrect. They are not bound only to this case.

74. I can only explain what happened by the attachments and abbreviating some things here for **ATL-L-3744-21:**

1. **6.20.2022** [Motion to (1) disqualify Rona Zucker Kaplan, (2) compel discovery to get at plaintiff's files from their office and pay a reasonable fee for scanning, (3) request for NJCS mandatory Ferra Conference 90 days after an answer to the complaint.

2. **7.01.2022** Order ignoring all my requests.

3. **7.25.2022** Moot on the issue of the Documents request.

4. **9.5.2022** STAY Pending appeal (ignored). *LCV20223176146*

5. **9.12.2022** Dismissal *LCV20223342638*

6. **12.10.2022** letter to Covey to judge, mercy for being hospitalized. *LCV20224205031 [ignored]*

7. **12.14.2022** Letter denying Stay by Mrs. Kaplan ignoring ADA Title II *LCV20224209009*: "I am responding to Plaintiffs' December 10, 2022, letter to the Court requesting "a stay in all proceedings from September 2022 to January 2022 as a reasonable request under the Americans With Disabilities act and a good cause in the interest of justice and the courts' mercy" because my husband has been hospitalized since September 16, 2022.

8. **02.06.2023** motion to dismiss LCV2023461491 even though the judge did not reinstate the case after dismissal. This is an act of consciousness of guilt from Rona Zucker Kaplan as an experienced attorney that she colluded with the judge to discriminate against Mrs. Kennedy because she did not believe the Order to dismiss had any authority.

9. **2.13.2023** Husband still sick *LCV2023524816. {ignored}*

10. **3.29.2023.** ADA Reasonable Request adjournment of motion to dismiss and extension of time to file a reply on Defendants' unknown motion to dismiss. *LCV20231067586*

11. **3.30.2022** The defense attorney requested to agent of the defendant to "require plaintiffs to attend conference call." Despite medical needs. *LCV20231076843*.

12. **4.07.2023** extension of time for Appeals under ADA *LCV20231209270*

13. **4.08.2023** Motion for change of venue and to compel discovery.

14. **05.05.2023** Order to compel discovery. *LCV20231468579.*

15. **06.01.2023** Order to grant unseal court records (attached) *LCV20231715411.*

16. **9.21.2023** ORDER DISMISSING APPEAL WITHOUT PREJUDICE from the Appellate court. It is the only one of its kind. NOT mailed or received, cannot access JEDS. *LCV20232983675* This was done after the Appellate court has been made aware of the ADA Title II violations.

17. **10.24.2023** Request for a Stay as a Reasonable Request under ADA Title II *LCV20233205099*

18. **11.02.2023** STATEMENT OF FACTS SUPPORTING DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A STAY and DEFENDANTS' CROSS MOTION (1) COMPELLING PLAINTIFFS' DEPOSITION AND (2) SETTING A DATE FOR THE PRODUCTION OF PLAINTIFFS' EXPERT REPORT. *LCV20233286271*

PRAYER FOR RELIEF

Therefore, Hilda Tobias Kennedy respectfully requests the following relief:

a. I, Hilda Kennedy respectfully request a declaratory judgment that in case ATL-L-924-22 I was denied my First Amendment and Fourteenth Amendment rights in a Fair Housing Act claim because the defendant was not in compliance with the requirements set in place by ADA Title II for me to benefit as a disabled person as the defendant is in a state-funded institution and the defendant discriminated against me openly as a disabled person to deny me access to court and to enjoy the same benefits others in the state receive, equal protection and due process for the perusing principle rights in the Fair Housing Act case.

b. I, Hilda Kennedy respectfully request a permanent injunction to have the defendant in compliance with the ADA Title II in all cases with disabled people going forward with a date of expectation.

c. I, Hilda Kennedy respectfully request a declaratory judgment that in case ATL-L-924-22 I was denied my First Amendment and Fourteenth Amendment rights through the non-compliance of ADA Title II because the defendant was not in compliance with the requirements set in place from ADA Title II as it is in all state-funded institution and it discriminated against as me, a disabled person to deny me access to court and to enjoy the benefits of others in the state receive, equal protection and due process for a protected right.

d. I, Hilda Kennedy respectfully request a permanent injunction to have the defendant in compliance with the ADA Title II in cases involving disabled persons in the New Jersey Appellate Court going forward with a date of expectation.

e. I, Hilda Kennedy respectfully request a declaratory judgment that I have suffered due to the defendant's retaliating against me while in pursuit of a protected activity.

f. I, Hilda Kennedy, respectfully request a permanent injunction that the defendant use the same/similar or better measures as the state-funded schools have in the state of New Jersey. Both are merit and work-based institutions. There are more schools than courts and more disabled persons in schools than in courts so if the school has no problem implementing these measures and existing as outlined here.... Then so too must the state-funded courts which must set the example since they oversee compliance of all institutions by law. Not doing so would be against ADA Title II in combination with the US Constitution's First Amendment and Fourteenth Amendment due process clause and deprive all the protected class disabled citizens of the state of New Jersey of the same rights and privileges enjoyed by others in the state that are not disabled.

I I, Hilda Kennedy respectfully request a declaratory judgment that I have suffered due to the defendant's negligence in not adhering to ADA Title II which caused me negligent emotional distress, financial hardship, humiliation, pain and suffering, loss of enjoyment of life and embarrassment, costs, and any other relief this court finds appropriate, just, and lawful.

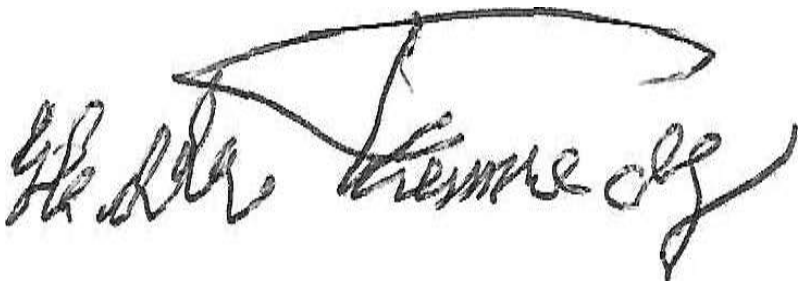
Pursuant to 28 U.S.C. § 1746, I, Hilda Tobias Kennedy have personal knowledge of the matters alleged in the foregoing Verified Complaint concerning myself, my activities, and my intentions. I verify under the penalty of perjury that the statements made therein are true and correct.

I HEREBY CERTIFY that on December 8, 2023, I served, Amended Complaint via regular mail and email to the defendant, to the following:

THOMAS FRANCIS SINDEL , JR
Office of the Attorney General of New Jersey
Tort Litigation and Judiciary Section
25 Market Street
P.O. Box 116
Trenton, NJ 08625
609-376-2986
Email: thomas.sindel@law.njoag.gov

DATED 12/08/2023.

Thank you. Respectfully submitted.



HILDA KENNEDY

HILDA T. KENNEDY,

Plaintiff, v.

THE NEW JERSEY COURT SYSTEM,

Defendant.

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE

Hon. Karen M. Williams,

U.S.D.J. Civil Action No. 1:22-cv-05797-KMW-MJS

Monday, December 25, 2023.

(Electronically Filed)

THE PLAINTIFF'S HILDA KENNEDY REQUEST FOR A STAY IN STATE PROCEEDING under 28 U.S. Code § 2283 - Stay of State court proceedings

---

Dear Honorable Federal Judge Karen M. Williams,

It hurts my heart to write this letter, especially at this time of the year, please accept my regrets as I thought I would not have to seek and get this request here.

As this court may be aware, on September 8, 2023, I had a traumatic head injury, broke my leg, and broke off my upper teeth slipping on the not-up-to-code toilet leak (determined faulty and replaced by order of the Atlantic City Code Enforcement).

Due to this injury, I had to cancel my appointment to take a picture of the file in the defendant's possession in my malpractice case (ATL-L-3744-21).

Subsequently, I had to remain under extra watch, and care, and undergo rehabilitation 2-3 times a week along with additional doctor's visits until (1/2024). Something I can not do alone. My husband has been sick too. He not only must take care of me but undergoes treatment himself. We are both legally disabled.

Moreover, I have had to do other important obligations including amending my complaint in this case by court order for which I had to request one 30-day extension and one emergency extension which this court has thankfully granted for good cause partly due to my disability. Thank you very much. It would not have been possible without these extensions. It may not be perfect, but hopefully, it is at least understandable as to who, and, when someone violated the law and what relief is requested that this court has jurisdiction to justly grant.

I informed the malpractice case of my injuries; The need to stop doing my discovery because of my and my husband's disabilities; and My need for time to amend my complaint in this court or lose it: I also informed the malpractice case of the fact that none of STAYS for my appeals have been deliberated even though I paid for the oral transcript. This is a part of my ADA Tile II violations complaint, so this new Stay with the above defendant is behind the other requests in fairness. These include ADA TITLE II STAYS, APPEAL STAYS, FERRA CONFERENCE requests, discovery requests, and many other causes that require attention so a need a STAY.

Indeed the opposing attorney said the case and cause of action before this court your honor in this court is of *no importance*. It is enough to break my heart even if not true because what hope do I have even in jest?

The opposing attorney in the malpractice case next unbelievably requested in-person depositions of me while I was injured with notice. It was delivered to me at home by personal delivery at breakfast on Monday, December 4, 2023, for a December 7, 2023 date. -I never denied a deposition before or would deny one if requested earlier whenever I am fine, but I had to inform the attorney of my appointments and my specific appointment with the orthopedic on December 7, 2023. The attorney understood but ignored these medical appointments and filed a 120+ motion to compel depositions for which my husband and I had to defend it, restating the above. Additionally, I explained:

It would be some time until I could speak well when I have teeth transplants or dentures or my teeth healed but sadly it takes time to physically do depositions as I struggle even to eat. But, -definitely- I would not be available for in-person depositions from September 8, 2023, until December 31, 2023, and likely longer.

My motion for a Stay from September 8, 2023, to December 31, 2023, on December 20, 2023, was denied on December 15, 2023.

It was denied even though I have not been able to copy my files or do my own depositions on the defendant and others. I am the moving party.

It is ordered in no uncertain terms that discovery ends on New Year's Eve, December 31, 2023. However, I still must do depositions until March 31, 2024. This is something completely unheard of in jurisprudence anywhere in the United States: Where one party, the non-moving party, can do discovery when the moving party is injured, but the other party, the moving party, can not do depositions as punishment for an injury that causes a disabled person an additional disability which prohibits them for doing that physical request.

For seeking the jurisdictional protection of federal laws and constitutional protections a consequence occurred. This in itself will drive an irremovable wedge to any authority seekers as precedence to 'beware' and stop or risk further embarrassment, pain, suffering, and emotional distress at the cost of one's ownership of rights in the original case. It is prejudicial to me, or anyone, in any light, and not be condoned.

The agent of the defendant stated in his denial ORDER that a deposition was requested before. This is completely false. My husband and I never received a notice to do depositions. Surely it would have been in an order that was filtered down to the last order to compel by the court: I have attached the court's most recent motion to compel order, no such order exists. The statement is regrettably made up to excuse the order as just.

In one of my motions in the malpractice case to compel the release of my records I requested to pay for them to be put on CD. It was simply ignored and not done.

I was allowed by the defendant to get a copy of my files in their possession if I *personally* photographed them under supervision.

Since it has been allowed I have gone to take photos 5 times from July 2023 to September 2023, permitting, from 10 am to 4 or 5 pm with my husband. I sometimes fall asleep while my husband and son take photos. I could not continue because of my injuries so I did not finish. I have about 20,000 photos most of which are duplicates. Without reviewing them all I can not do my depositions of the defendants let alone get an expert for a half-done record.

My husband and I pawned and attempted to sell our wedding rings to make the court transcript of the trial by torture for the appeal (required) that led to the malpractice case. However, the transcriber called and explained that she remembered typing it, and the defendant (the insurance company adversary) in the case already paid for it. She did not have to charge me since it was paid. I would only have to pay for a copy. I was so happy to have saved our wedding rings that you can not believe it.

This new action by the agent of the defendant is a completely new cause of action with this court. I may need to amend the complaint by leave of the court or seek a new complaint if needed.

However, now seek a Stay in the proceeding in ATL-L-3744-21.

> 28 U.S. Code § 2283: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." .....
>
> ....."Second **[*reason for granting a Stay*]**, a federal court may enjoin a state proceeding "where necessary in aid of its jurisdiction" (the Necessary In Aid Exception).12 To fall within this exception, "the state action must not simply threaten to reach judgment first, it must interfere with the federal court's own path to judgment."13.

I have attached the article with the parts above highlighted for the convenience of the court.

The actions of the defendant's agent interfere with this court's path to judgment. My Stay was denied to deny me time to amend the complaint because I needed that time as a disabled person (interference). Additionally, I had a catastrophic injury that prohibited me from the physical demands of the case. This denial of a Stay is not only punishment for my disabilities but interferes with the path to judgment as punishment -without an amended complaint no case exists where one was found to exist.

If the case is dismissed the path to judgment is blocked in my understanding assuming disabled people are indeed protected in the defendant's domain which extends to now.

Moreover, the independent cause of action flies in the face of the older allegations and rights sought in this court by my ADA TITLE II protections, and constitutional rights and extends to new causes of action. The defendant's agent is now ignoring the rights sought, knowing that I can not appeal.

The phrase "path of judgement" appears is a phrase of the Bible in Proverbs 2:8. It refers to the paths of the just, or the paths in which the just walk. The path of Calvary is one of the paths of judgement, where sinners are justified. When we come to Jesus at Calvary and receive what he has already done for us as our propitiation for sin, we are judged "not guilty". The path to judgment here is similar in that I am disabled and am seeking judgment because of my disability (sin) by law is not a sin (extra help) so I too am not guilty of what the wrongs bestowed on me (injustice): The worst possible outcome for a bad actor is a case like mine is when the one subject to their gaslighting[1] is found not guilty (protected).

This is what is being interfered with by the agent of the defendant by denying my motion for a STAY now and pending the outcome of this case. It is making me crazy and interfering with my path to judgment by vacating my case in retaliation and connection to this case in contention to this court.

---

[1] the practice of psychologically manipulating someone into questioning their own sanity, memory, or powers of reasoning

On its own, the acts by the agent of the defendant are a declaration of a judicial admittance of guilt by denying all the other actions knowing this court's finding (OPINION) which are in question as negligence. Still, I have not been adjudicated yet. Indeed it grants the one party, the non-moving party, who failed to follow a court-ordered schedule to ad hoc a new entry of depositions now when the depositions had never been requested or sought until my injury, my new additional disability. Trying to wrongly, fully take advantage of my disability as the defendant's other agent and the malpractice attorney did is remarkable. It exemplifies the problem: Allowing me to be tortured on the stand or in a deposition for a question of distance and other things I can not possibly answer, hurts just as much as it is real, over and over again. Nonstop then to now.

I respectfully request a STAY in the state action pending this case judgment in that it interferes with this court's path to judgment in a way that is real (not allowing s disabled protected class time to amend their complaint in federal court over federal rights in that very case); It interferes in that it is contemptuous where if a defendant before the court said to the court, 'it has no jurisdiction it doesn't matter' (not true); it interferes in that it challenges the jurisdiction of this court and its power to uphold the federal law, and constitutional right which is not permitted anywhere in the United States: The agent of the defendant is doing the same act as is alleged in the amended complaint again as if nothing. They should not have to be reminded of the reason why and how it is wrong to deny federal law or why that came to be.

It interferes with this court's path to judgment in that if vulnerable protected class people within the United States believe that the federal court has no power to enforce federal law and constitutional issues; it would deter others from pursuit in federal courts fearing retaliation which would believe that a litigant is better served by simply pushing forward and ignoring federal authority, taking the embarrassment, fear, pain and suffering and emotional distress like one deserves. It interferes with this court's path to judgment in that all federal rights, including civil rights, would be lost that were hard fought and the court's power would wither away like a flower in winter.

Pursuant to 28 U.S.C. § 1746, I, Hilda Tobias Kennedy have personal knowledge of the matters alleged in the foregoing Verified Complaint concerning myself, my activities, and my intentions. I verify under the penalty of perjury that the statements made therein are true and correct.

I HEREBY CERTIFY that on Monday, December 25, 2023, I served, STAY via regular mail and email to the defendant, to the following:

THOMAS FRANCIS SINDEL , JR
Office of the Attorney General of New Jersey
Tort Litigation and Judiciary Section
25 Market Street
P.O. Box 116
Trenton, NJ 08625
609-376-2986
Email: thomas.sindel@law.njoag.gov

DATED 12/25/2023.

Thank you. Respectfully submitted.

HILDA KENNEDY

PREPARED BY THE COURT

HILDA T. KENNEDY and JOHNATHAN F. KENNEDY, wife and husband,

Plaintiffs,

vs.

COOPER LEVENSON, P.A.; and RANDOLPH C. LAFFERTY,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ATLANTIC COUNTY

DOCKET NO. ATL-L-3744-21

Civil Action

ORDER

THIS MATTER having been presented to the Court on the following applications: Plaintiffs, Hilda T. Kennedy, *pro se* and Johnathan F. Kennedy, *pro se*, for a Motion to Stay Case; Defendants, Cooper Levenson, P.A. and Randolph C. Lafferty, for cross-motions to compel deposition and set date for production of expert report; and Plaintiffs, Hilda T. Kennedy, *pro se* and Johnathan F. Kennedy, *pro se*, for cross-motions for sanctions for frivolous motions and disobeying a court order, and the Court having considered the moving papers, and for good cause shown as stated in the accompanying Memorandum of Decision;

IT IS, on this 15th day of December, 2023 **ORDERED**:

1. Plaintiffs' Motion to Stay is **DENIED**.
2. Defendants' Cross-Motion to Compel Depositions is **GRANTED**.
3. Defendants' Cross-Motion to Set a Date for Production of Plaintiffs' Expert Report is **GRANTED**; Plaintiffs shall produce an expert report within sixty (60) days of the date of this Order.
4. Plaintiffs' Cross-Motion for Sanctions for Frivolous Motions is **DENIED**.
5. Plaintiffs' Cross-Motion for Sanctions for Disobeying a Court Order is **DENIED**.

2024.

IT IS FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.

HON JOHN C. PORTO, P.J.Cv.

(X) Opposed

( ) Unopposed

6. The Discovery End Date is extended ninety (90) days from the current date of December 31, 2023, and the new Discovery End Date is March 30,

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

JOHN C. PORTO, P.J.Cv.

1201 Bacharach Boulevard
Atlantic City, N.J. 08401-4527
(609) 402-0100 ext. 47820

MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)

TO: Hilda T. Kennedy, *pro se*
Johnathan F. Kennedy, *pro se*
2834 Atlantic Ave.
Atlantic City, NJ 08401
HildaTKennedy@gmail.com
Plaintiffs

Rona Zucker Kaplan, Esq.
Cooper Levenson, P.A.
Attorney for Defendants, Cooper Levenson, P.A., et al.

RE: Kennedy v. Cooper Levenson, P.A., et al.

DOCKET NO. ATL-L-3744-21

NATURE OF MOTION: Plaintiffs' Motion to Stay; Defendants' Cross-Motion to Set Dates for Submission and Compel Deposition; and Plaintiffs' Cross-Motions for Sanctions.

HAVING CAREFULLY REVIEWED THE MOVING PAPERS, I HAVE RULED ON THE ABOVE CAPTIONED MOTION AS FOLLOWS:

Nature of Motion and Procedural History

This is an alleged professional malpractice matter. On November 13, 2021, Plaintiffs, Hilda and Jonathan Kennedy (collectively "Plaintiffs"), filed a complaint against Defendants, Cooper Levenson, P.A. and Randolph Lafferty, Esq. (collectively "Defendants"). On February 2, 2022, Plaintiffs' motion to amend their complaint was granted. Defendants submitted their Answer to the Amended Complaint on March 8, 2022.

On October 24, 2023, Plaintiffs' filed this Motion and, on October 31, 2023, filed an amended Motion requesting the Court enter a stay in the case. The discovery end date is December 31, 2023. Trial is not currently scheduled.

Parties' Contentions[1]

Plaintiffs

Plaintiffs requests the Court enter an Order Staying the proceedings in this case until December 31, 2023.

In support of the Motion to Stay, Plaintiffs provide a stay is a normal course of action for numerous reasons. Specifically, Plaintiffs contend a stay is normal for their appeal, "especially when it is hindered by ADA Title II violations . . . and the relief sought is discriminatory." Additionally, Plaintiffs provide, a stay is normal considering the injuries of Plaintiff, Hilda T. Kennedy. To this, Plaintiffs argue their injuries, and other noted handicaps, prevent them from pursing this lawsuit in a more timely manner. Finally, "[a] stay to file [Plaintiffs'] federal case is normal" and "wait for the interlocutory federal case is viable too . . . ."

Separately, regarding depositions, Plaintiffs contend more time is needed to finish taking photos of their file—which is located at the Cooper Levenson, P.A. office, in Atlantic City, New Jersey. Plaintiffs argue that they need to complete the review of their file before depositions are taken.

Plaintiffs conclude that a denial of their request for stay would be "retaliation/interference," along with irreparably damaging, and an Americans with Disabilities Act ("ADA") violation of Title II.

[1] The contentions are general summaries and not meant to encompass all arguments made in the parties' filings.

Defendants' Opposition

Defendants' argue Plaintiffs' motion to stay should be denied because Plaintiffs have not provided any proof showing they cannot pursue, let alone timely pursue, their lawsuit. In support, Defendants provide the Plaintiffs' handicaps have not prevented them from filing motions and appeals, in the instant and federal case, along with travelling to Defendants' office to inspect documents.

Plaintiffs' Reply

In reply, Plaintiffs cite to § 4-1.6 of the ABA(s) "Part 1: General Standards." Plaintiffs allege Defendants, and counsel, are manifesting "bias or prejudice based on . . . disability . . . ."

Further, Plaintiffs argue a stay is "well within the protection of federal law, they must be expected and granted for that alone[,] let alone in the interest of justice." Plaintiffs also forecast that additional stays will be needed in the future.

Plaintiffs allege prejudice if the motion is not granted and contend—if denied—this Court will have acted in retaliation, and/or colluded with Defendants to retaliate, against Plaintiff for filing for a protected activity or to infringe on the Plaintiffs' rights as a disabled person.

Defendants' Cross-Motion

Defendants make two cross-motions: (1) compelling Plaintiffs' depositions; and (2) setting a date for production of Plaintiffs' expert report.

Regarding the cross-motion to compel Plaintiffs' depositions, Defendants state on October 27, 2023, they served a notice of deposition on Plaintiffs for November 7, 2023, or any other available date. Defendants argue although Plaintiffs contend they were unavailable because of doctor's appointments, Mrs. Kennedy did not have an appointment on November 7, 2023. However, Defendants offered just to depose Mr. Kennedy on November 7, 2023, but were refused.

Regarding Defendants' cross-motion to set a date for the submission of Plaintiffs' expert report, Defendants argue they cannot prepare their defense without the report. Specifically, Plaintiffs did not provide an expert report outlining what Defendant, Randolph C. Lafferty, Esq., did to breach the duty of care owed or opining that the alleged breach caused the jury to find no cause. Defendants further argue this is not the type of case where an affidavit of merit or an expert report is not required. Here, Defendants, distinguish the complexity of this case with Popwell,[2] a case where it was "common knowledge" that an attorney was negligent when an attorney did not timely file a request for trial *de novo*.

Plaintiffs' Opposition

Regarding Defendants' cross-motion to compel deposition, Plaintiffs submitted opposition, arguing it is an attempt to harass "an elderly disabled person to take advantage of her horrible medical situation . . . ." Plaintiffs contend "[n]o competent attorney would or could expect any well-functioning court to collude to grant such a motion to compel while a motion for a [stay] is pending."

Further, Plaintiffs argue a deposition cannot be taken as they have not finished the review of their file. Therefore, Plaintiffs state they have not objected or denied any deposition, but contend it is not just possible now due to Plaintiffs health circumstances. Plaintiffs certify Defendants' counsel understood this but filed this cross-motion anyway to "harass, intimidate, cause mental anguish, [and] interfere with [P]laintiffs filing in federal court." Additionally, Plaintiffs provide that even if Mrs. Kennedy could accommodate the Defendants deposition request, "she still cannot speak well or without pain for any long period of time due to her broken upper teeth." Therefore, Plaintiffs contend Defendants filed this cross-motion in retaliation.

---

[2] Popwell v. Law Offices of Broom and Horn, 363 N.J. Super. 404 (App. Div. 2002).

Plaintiffs' Cross-Motion

Plaintiffs' make two cross-motions for sanctions: (1) for frivolous motions; and (2) for willfully disobeying a court order.

Specifically, regarding sanctions for frivolous motions, Plaintiffs allege that Defendants' cross-motion to compel deposition are "a mere pretense to retaliate against a disabled person for filing an ADA [c]omplaint, a protection action and dela them from their federal obligation." In support of the argument that Defendants engaged in retaliation, Plaintiffs' cite American Bar Association Rule 3.5 and argue Defendants are seeking to influence and disrupt the Court. Further, Plaintiffs cite § 4-1.6 of the ABA(s) "Part 1: General Standards." Plaintiffs allege Defendants, and counsel, are manifesting "bias or prejudice based on . . . disability . . . ."

Regarding sanctions for willfully disobeying a court order, Plaintiffs argue "[t]he request for a date for production for an expert witness is needless because it is already settled by a [C]ourt O[rder] which created a [stay] for the motion for 'common knowledge' . . . ." Additionally, Plaintiffs argue they attempted to contact Defendants' attorney to make an agreeable scheduling plan but received no answer.

Collectively, Plaintiffs argue, Defendants' cross-motions to compel and set a date are "frivolous and would never have come up had [P]laintiff not filed for a [stay] for health issues and the obligations in connection to an ADA right in federal court."

Discussion

Plaintiffs' Motion to Stay

Generally, a motion to stay a proceeding pending an appeal "shall first be made to the court which entered the judgment or order." See R. 2:9-5(b). All requests for a stay are governed in a similar manner. Motions for a stay pending appeal are governed by the standard for relief outlined in Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982). See e.g., Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013)

(citing Matter of Comm'r of Ins. Deferring Certain Claim Payments by N.J. Auto. Full Ins. Underwriting Ass'n, 256 N.J. Super. 553, 560 (App. Div. 1992)). Motions to stay for other purposes are also governed by the Crowe standard. Accordingly, to succeed on a motion for a stay, a movant must show:

> that (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the "relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were." McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting) (citing Crowe, supra, 90 N.J. at 132-34, 447 A.2d 173). The moving party has the burden to prove each of the Crowe factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012) (citation omitted). "In acting only to preserve the status quo, the court may 'place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy.'" Ibid. (citation omitted).
>
> [Garden State Equality v. Dow, 216 N.J. at 320.]

The burden is on the movant to establish each "Crowe factor by clear and convincing evidence." Dow, 216 N.J. at 320 (citing Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012)). In addition to the traditional Crowe factors, a court is required to consider the public interest when "a case presents an issue of 'significant public importance.'" Ibid. (citation omitted). The determination of whether to enter an order staying the proceedings is left to the court's discretion and depends on the equities in the case. Avila v. Retailers Mfrs. & Distribution, 355 N.J. Super. 350, 354 (App. Div. 2002). In preserving "the *status quo*, the court may 'place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy.'" Dow, 216 N.J. at 321 (quoting Brown, 424 N.J. Super. at 183).

The movant has the burden to show by clear and convincing evidence that each of the Crowe standards are met. Further, determination to authorize a stay is within the exercise of judicial discretion.

In this instance, the Court does not find that a Stay is appropriate as the Plaintiff did not meet the Crowe standard by clear and convincing evidence. Specifically, the Plaintiff did not demonstrate a stay is needed to prevent irreparable harm, or of a likelihood of success and did not cite to any settled law. Additionally, upon applying the balancing test, the Court did not find any evidence of greater harm to Plaintiffs if the stay is not granted as Plaintiffs are free to pursue any necessary relief in their other cases, both state and federal, while simultaneously advocating for themselves in the instant case. The Plaintiffs initiated the litigation. Accordingly, Plaintiff's Motion to Stay this Case is **DENIED**.

Defendants' Cross-Motions to Compel Various Discovery

The rules of discovery are to "be construed liberally in favor of broad pretrial discovery," Payton v. New Jersey Turnpike, 148 N.J. 524, 535 (1997). This policy is based upon the principle that "[o]ur court system has long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties are conversant with all the available facts." Jenkins v. Rainner, 69 N.J. 50, 56-57 (1976). R. 4:10-2(a) provides:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It

> is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; nor is it ground for objection that the examining party has knowledge of the matters as to which discovery is sought.

Additionally,

> Prior to moving to dismiss pursuant to [R. 4:23-5(a)(1)], a party may move for an order compelling discovery demanded pursuant to R. 4:14, R. 4:18 or R. 4:19. An order granting a motion to compel shall specify the date by which compliance is required. If the delinquent party fails to comply by said date, the aggrieved party may apply for dismissal or suppression pursuant to subparagraph (a)(1) of this rule by promptly filing a motion to which the order to compel shall be annexed, supported by a certification asserting the delinquent party's failure to comply therewith.
>
> [R. 4:23-5(c).]

Plaintiffs' Depositions

In this case, the Court finds Plaintiffs' deposition was scheduled on multiple previous occasions, each of which was adjourned. Therefore, the Court finds it is appropriate to compel Plaintiff's deposition. Plaintiff is to appear for a deposition on or by the discovery end date.

Accordingly, Defendant's Cross-Motion to Compel Plaintiffs' depositions are **GRANTED**.

Set Date for Production of Plaintiffs' Expert Report

"Legal-malpractice suits are grounded in the tort of negligence." McGrogan v. Till, 167 N.J. 414, 425 (2001). The elements of a cause of action for legal

malpractice are "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by the plaintiff." Morris Props. v. Wheeler, 476 N.J. Super. 448, 459 (App. Div. 2023) (citing Jerista v. Murray, 185 N.J. 190-91 (2005)). Proximate cause requires an initial determination of cause-in-fact—which requires proof that the result would not have occurred but for the negligent conduct. Ibid. Then, a plaintiff "'must present evidence to support a finding that defendant's negligent conduct was a substantial factor in bringing about plaintiff's injury . . . .'" Ibid. (quoting New Gold Equities Corp. v. Jaffe Spindler Co., 453 N.J. Super. 358, 379 (App. Div. 2018)). "Finally, the plaintiff must 'show what injuries were suffered as a proximate consequence of the attorney's breach of duty,' ordinarily measured by 'the amount that a client would have received but for the attorney's negligence.'" Ibid. (quoting Froom v. Perel, 377 N.J. Super. 298, 313 (App. Div. 2005)).

Ordinarily, expert testimony is required in a legal malpractice case. But when the attorney's "duty is so basic that it may be determined by the court as a matter of law," expert evidence is not required to establish the attorney's duty of care. Brizak v. Needle, 239 N.J. Super. 415, 429 (App. Div. 1990), certif. denied, 122 N.J. 164 (1990). In other words, "[e]xpert testimony is not required in legal malpractice cases where the issues are not 'beyond the knowledge of the average person,' or are 'within the ordinary knowledge and experience of laymen.'" Id. at 431-32. Or, as stated in Rosenberg v. Cahill, 99 N.J. 318, 325 (1985), "[t]he most appropriate application of the common knowledge doctrine involves situations where the carelessness of the defendant is readily apparent to anyone of average intelligence and ordinary experience." Instances where an expert is not necessarily particularly arise "where the causal relationship between the attorney's legal malpractice and the client's loss

is so obvious that the trier of fact can resolve the issue as a matter of law." Kranz v. Tiger, 390 N.J. Super. 135, 147-48 (App. Div. 2007) (citing Sommers v. McKinney, N.J. Super. 1, 11 (App. Div. 1996).

Here, Defendants are requesting the Court to set a date for Plaintiffs' expert reports. The Courts finds the sought after expert report necessary for Defendants to prepare their defense. Accordingly, Defendants' cross-motion to set date for production of Plaintiffs' expert report is **GRANTED**. Plaintiff shall produce an expert report within sixty days.

Plaintiffs' Cross-Motion for Sanctions for Frivolous Motions and Disobeying Court Order

R. 1:10-3, Relief to Litigant, provides, in pertinent part:

> Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he or she signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release provided, however, that no order for commitment shall be entered to enforce a judgment or order exclusively for the payment of money, except for orders and judgments based on a claim for equitable relief including orders and judgments of the Family Part and except if a judgment creditor demonstrates to the court that the judgment debtor has assets that have been secreted or otherwise placed beyond reach of execution. The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule….

Aside from applications for a finding of contempt of court under R. 1:10-1 and R. 1:10-2, a litigant may also seek relief for a non-complying party under R. 1:10-3.

The scope of relief under this rule is "limited to remediation of the violation of a court order." Abbott v. Burke, 206 N.J. 332, 371 (2011).

Normally for punitive or coercive relief, the movant must show that the non-complying party had the capacity to comply and was willfully contumacious in its non-compliance. See, e.g., Schochet v. Schochet, 435 N.J. Super. 542, 549-50 (App. Div. 2014). However, when a litigant's sought relief is merely to enforce an order, there is no "willfulness" requirement. See Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App. Div. 1975) (showing of willful disobedience of a court order is "irrelevant in a proceeding designed simply to enforce a judgment on a litigant's behalf").

The Court finds R. 1:10-3 governs Plaintiffs' request. Plaintiffs alleged Defendants' counsel filed motions that are meant to harass Plaintiffs and, further, are in violation of a prior order of this Court. However, on this record, the Court finds the imposition of sanctions are not appropriate.

Accordingly, Plaintiffs' Cross-Motions for Sanctions are **DENIED**.

Discovery Extension

In light of this Court's rulings, the ordered and other outstanding discovery requires the Court to extend the discovery end date. Currently, the discovery end date is December 31, 2023. The Court is extending the discovery end date by ninety (90) days to facilitate the completion of all ordered and outstanding discovery. The new discovery end date is March 30, 2024.

An appropriate Order is entered on eCourts. Conformed copies accompany this Memorandum of Decision.

HON. JOHN C. PORTO, P.J.Cv.

Date: December 15, 2023

Bloomberg Law Reports® Federal Practice

The Exceptions to the Anti-Injunction Act: A Federal Injunction May Be the Shortest Route to Success in a State-Court Suit

Craig W. Canetti, Mayer Brown LLP

Introduction

When a party is named as a defendant in a state-court lawsuit, it is entirely natural—and generally correct—for that litigant to conclude that, barring a basis for removal to federal court, its fate will remain in the hands of the state's courts, perhaps for years to come. However, if either of the parties to the state proceeding is or has been a party to a federal action involving the same or similar claims or issues, or if the state proceeding implicates a uniquely federal right or remedy, that state-court defendant may have at its disposal a means to bring the state suit to a relatively quick and successful end in federal court. Specifically, the federal Anti-Injunction Act (AIA), 28 U.S.C. § 2283, includes three exceptions that empower a federal court to enjoin a state proceeding when necessary to give full effect to a federal right or remedy, or to protect or preserve the federal court's exercise of its jurisdiction or a prior federal judgment. What is more, because these exceptions are intended to preserve the effectiveness of federal law and the authority of the federal courts—not to protect the purely private interests of the party that seeks the injunction—the AIA and the cases applying it impose few requirements for seeking an injunction, other than that it must fall clearly within one of the statutory exceptions. This article seeks to shed some light on the scope of the AIA exceptions and how state-court defendants might go about taking advantage of this perhaps overlooked path to bringing a state suit to a favorable conclusion.

The Origins of the Anti-Injunction Act and the Scope of its Exceptions

The constitutional right of each state to maintain its own independent judicial system for the resolution of legal disputes is a fundamental tenet of our nation's federal system of government.[1] Equally fundamental was Congress's recognition that the existence of two "essentially separate legal systems"—state and federal—"was bound to lead to conflicts and frictions," as litigants "predictably hasten[ed] to invoke the powers of whichever court it was believed would present the best chance of success," raising the specter of state and federal courts "fight[ing] each other for control of a particular case."[2] To forestall this danger, Congress implemented "a general policy

---

under which state proceedings 'should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately [the U.S. Supreme] Court.'"[3]

The current embodiment of this policy is the AIA, which imposes a nearly absolute ban on the issuance of federal injunctions against state-court proceedings. That ban is *nearly* absolute, because the AIA expressly establishes three exceptions. Specifically, the AIA provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court *except* as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.[4]

If one of these statutory exceptions applies, a federal court is affirmatively authorized to enjoin a state proceeding pursuant to the All-Writs Act (AWA), 28 U.S.C. § 1651(a), which provides that the federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."[5]

The Supreme Court has explained that the exceptions to the AIA "are designed to ensure the effectiveness and supremacy of federal law."[6] They do so in three distinct ways.

First, a federal injunction against a state proceeding is appropriate when "expressly authorized by Act of Congress" (the Expressly Authorized Exception).[7] This language is somewhat misleading because the Supreme Court has held that "a federal law need *not* expressly authorize an injunction of a state court proceeding in order to qualify as an exception."[8] Indeed, "'no prescribed formula is required,'" and "'an authorization need not expressly refer to § 2283.'"[9] Rather, "[t]he test . . . is whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding."[10] Statutes that have been held to expressly authorize federal injunctions against state suits include the Bankruptcy Code (11 U.S.C. § 105(a)), the Civil Rights Acts (42 U.S.C. § 1983), Section 205 of the Emergency Price Control Act of 1942 (EPCA), the Private Securities Litigation Reform Act (PSLRA) (15 U.S.C. § 77z-1(a)(3)(B)), and the National Environmental Policy Act (NEPA) (42 U.S.C. § 4332).[11]

Second, a federal court may enjoin a state proceeding "where necessary in aid of its jurisdiction" (the Necessary In Aid Exception).[12] To fall within this exception, "the state action must not simply threaten to reach judgment first, it must interfere with the federal court's own path to judgment."[13] This exception has been applied principally to enjoin parallel state *in rem* proceedings,[14] because "the exercise by the state court of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court already attached" to the *res*.[15] By contrast, parallel state and federal *in personam* actions traditionally have been allowed to proceed concurrently, with the action that reaches judgment first potentially creating a *res judicata* or collateral estoppel effect in the other.[16]

However, some courts have applied the Necessary In Aid Exception in the context of consolidated multidistrict litigation or complex class actions, when a parallel state proceeding threatened to disrupt the orderly resolution of the federal action.[17] The rationale for this application of the exception is that the jurisdiction of a federal court presiding over multidistrict or class-action litigation is "analogous to that of a court in an *in rem* action or in a school desegregation case, where it is intolerable to have conflicting orders from different courts."[18]

The third and final exception empowers a federal court to enjoin a state proceeding in order "to protect or effectuate its judgments."[19] Commonly referred to as the "Relitigation Exception," it "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court."[20] This exception "is founded in the well-recognized concepts of *res judicata* and collateral estoppel"[21] and "rests on the idea that federal courts should not be forced to rely on state court application of *res judicata* or estoppel principles to protect federal court judgments and decrees."[22]

However, unlike the doctrines of *res judicata* and collateral estoppel, which generally preclude the relitigation of issues that were raised or *could have been raised* in a prior suit,[23] the Relitigation Exception permits an injunction only against a state proceeding that raises issues that were *actually litigated before and decided by* a federal court.[24] Consistent with that requirement, the exception authorizes an injunction both when the plaintiff "can only win [the] state suit by convincing the state court that the [prior] federal judgment was in error,"[25] and when a particular issue that is raised in the state proceeding previously was submitted to and decided in the federal suit.[26]

As the foregoing summary should make clear, the overarching purpose of the statutory exceptions to the AIA is to protect the interests *of the federal courts* in preserving and effectuating their jurisdiction and judgments. However, the principal mechanism for alerting a federal court to a state proceeding that threatens these interests is for a *private party* to request that the federal court enjoin the state action. Accordingly, as the sections that follow explain, the AIA and cases applying it impose few barriers to bringing these matters before a federal court. This, in turn, may provide a unique alternative for a defendant in a state-court proceeding to efficiently and successfully terminate that state suit.

Getting into Federal Court under an Exception to the Anti-Injunction Act

The precise method by which a party should request injunctive relief from a federal court pursuant to an AIA exception will depend upon the procedural posture of the federal suit that is claimed to be threatened by the state proceeding. If a final judgment has been entered in the federal action and it has been closed on the court's docket, the proper course is to file a complaint in the same federal court requesting injunctive relief under the AWA and the pertinent exceptions to the AIA.[27] However, the first hurdle that most prospective plaintiffs need to jump in a federal suit—establishing the court's subject-matter jurisdiction—is not an issue when an injunction is sought under an AIA exception. That is because the federal court's jurisdiction over the injunction suit "is based on the original [federal] case," and it is

thus "not necessary for the district court to have jurisdiction over the second suit as an original action."[28] And because, in almost all cases, the resolution of the claim for injunctive relief will be based on the pleadings, transcripts, and other documents made part of the record in the original federal action and in the state proceeding, the party seeking the injunction should be able to move promptly for summary judgment on its claim.[29]

Alternatively, if the federal action is ongoing, as may be the case when the state proceeding is claimed to interfere with the resolution of federal multidistrict litigation or a complex federal class action, the proper course is for a party to file a motion in the federal district court requesting that an injunction be entered.[30] Once again, resolution of the motion should be expedited by the fact that the evidence necessary for the court to rule will, in most cases, be documentary and already of record in the pertinent suits.

Who Can Invoke the Exceptions to the Anti-Injunction Act

If a party is involved in an ongoing federal suit that is threatened by a parallel state proceeding, that party already is properly before the federal court and can simply move for an injunction in that forum. If, by contrast, the federal action has been closed, requiring that a complaint seeking injunctive relief be filed in the federal court that presided over the prior suit, then the party seeking the injunction must establish its standing, i.e., that it "has alleged such a personal stake in the outcome of the controversy as to warrant [its] invocation of federal-court jurisdiction."[31]

Naturally, if the party requesting the injunction also was a party to the prior federal judgment that is threatened by the state proceeding, there should be no doubts as to that party's interest in having the federal court enjoin the state action.[32] However, the conventional approach to standing is somewhat out of place in the context of a claim for relief under an exception to the AIA because, as previously noted, the three AIA exceptions are focused on protecting the interests of the *federal courts*, not those of the party seeking an injunction. Consistent with that principle, federal courts also have held that litigants who were *not* parties to a prior federal action nonetheless may properly request an injunction under an AIA exception when, for example, the non-party played a role in the federal litigation that was so inherently intertwined with the federal court's final judgment that state proceedings against the non-party draw into question and threaten the integrity of the federal judgment.

One particularly notable group of non-parties that has been held to be entitled to relief under an AIA exception is professionals who somehow participated in or contributed to the federal court's disposition of the prior federal suit. In one case, for example, a former debtor filed a state suit claiming that certain professionals who had participated in the administration of the bankruptcy estate — including the attorneys for the bondholders' committee and for the bankruptcy trustee—had perpetrated a fraud on the bankruptcy court.[33] The Seventh Circuit held that these non-party professionals were entitled to seek injunctive relief under the Relitigation Exception for the purpose of protecting the integrity of the bankruptcy process and the orders of the bankruptcy court.[34] The court explained that "[a]ll the same allegations of fraud [in the state suit] were made many years earlier in the

bankruptcy proceeding" and "were ruled upon adversely to [the state plaintiff]."[35] Accordingly, "[i]f [the state plaintiff] were successful in its state court action, the bankruptcy court's order of distribution would be nullified"[36] because the bankruptcy court's rulings "all rest[ed] on the rejection of [the state plaintiff's] allegations."[37] The Seventh Circuit held that there were "especially compelling reasons" for issuing the injunction in favor of the non-parties, because each "participated in that [bankruptcy] proceeding in some way necessary to the administration of the estate" and therefore "should be protected, for the same reason parties should be protected, from the burden and expense of relitigation in a state court."[38] The court emphasized that "allowing an unsuccessful litigant to harass other participants in the federal case flouts and may be said to 'seriously impair the federal court's . . . authority to decide that case.'"[39]

Likewise, the U.S. Bankruptcy Court for the Western District of Pennsylvania cited *Samuel C. Ennis & Co.* in ruling that the non-party accountants for the debtors in a prior bankruptcy case had standing to seek an injunction against a state malpractice and fraud action that "amount[ed] to a collateral attack" on the bankruptcy court's prior confirmation and fee orders.[40] The bankruptcy court explained that "[a]n injunction [was] necessary in order to protect and effectuate the prior decisions of this Court," because the state plaintiffs—who were "the losing party" in the bankruptcy proceeding—"simply refuse[d] to be bound by the outcome"[41] and instead sought to relitigate in the state court the bankruptcy court's prior determinations that the debtors were insolvent and that the accountants were entitled to their fees for their work for the debtors.[42]

And lest one think that federal courts' openness to injunction suits by non-parties is unique to bankruptcy proceedings, the District of Columbia Circuit affirmed a permanent injunction against a state proceeding that "complain[ed] about the performance of [the state plaintiffs'] attorneys in a [prior federal] class action."[43] Specifically, the plaintiffs in the state suit alleged that their former counsel had breached various duties in negotiating and agreeing to a settlement of the federal class action.[44] The court of appeals held that the injunction against the state action was proper under the Relitigation Exception because these issues had been decided by the federal courts when (1) the district court determined that the class settlement was "fair, adequate, and reasonable and . . . not the product of collusion between the parties" and that "class counsel fairly and adequately protected the interests of the class,"[45] and when (2) the D.C. Circuit held in a prior appeal that the class action was properly certified under Rule 23(b)(2) of the Federal Rules of Civil Procedure.[46] The court expressly rejected the argument that the Relitigation Exception can apply only if the parties to both the state and federal suits are identical, explaining that "[t]he doctrine of collateral estoppel, or as it is now commonly called 'issue preclusion,' . . . provides that once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation."[47]

When Must an Injunction Be Sought under the Exceptions to the Anti-Injunction Act?

There is no specific time within which one must seek an injunction under an exception to the AIA. Indeed, courts have expressly held that when one of the

exceptions applies, a federal court "may enjoin state proceedings *at any point in time 'from the institution to the close of the final process*.'"[48]

This open-ended power of federal courts to enjoin state proceedings under the AIA exceptions derives from the fact that the AIA itself is devoid of any time restrictions and from the Supreme Court's interpretation of the statutory term "proceedings in a State court" in 28 U.S.C. § 2283 as being "comprehensive," encompassing "all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process," including appellate proceedings, the execution on a judgment, and "any proceeding supplemental or ancillary taken with a view to making the suit or judgment effective."[49] Thus, the stage at which the injunction is sought is not what controls the applicability of the AIA to a state proceeding. Rather, "in assessing the propriety of an injunction entered to stop a state court proceeding, *the sole relevant inquiry* is whether the injunction qualifies for one of the exceptions to the Anti-Injunction Act."[50]

Nor should the doctrines of waiver and laches generally act as a barrier to injunctions under an AIA exception. The passage of time cannot reasonably bar a federal court from acting to protect the federal judicial interests that lie at the heart of the AIA exceptions. Indeed, it is difficult to conceive of a situation in which a federal court would rule that a state court should be permitted to take actions or reach conclusions that could, for instance, destroy the effect of the federal court's prior judgment simply because the party requesting the injunction allegedly took too long to bring the matter to the federal court's attention. Regardless of how quickly the federal court learns of the threat to its interests, the threat itself remains the same, as does the federal court's authority to curtail it.

This is not to say that a party should not act promptly to request an injunction once it becomes aware that a state proceeding threatens federal interests in a manner that implicates an exception to the AIA. However, a delay in seeking that relief is not fatal to a successful outcome.[51] In fact, several courts have held that substantial delays in the commencement of a federal injunction suit were not a bar to the issuance of a permanent injunction against the state proceedings.

In *Amalgamated Sugar Co. v. NL Industries, Inc.*, 825 F.2d 634 (2d Cir. 1987), the Second Circuit affirmed an injunction against state court proceedings even after the party seeking injunctive relief had moved for summary judgment in the state court. Far from constituting laches or a waiver of the party's right to seek the federal injunction, the party's participation in the state court proceedings was viewed as an "attempt[] to avoid invoking the more intrusive remedy of injunctive relief."[52] Likewise, in *Samuel C. Ennis & Co.*, the Seventh Circuit held that the state-court defendants had not waived their right to a federal injunction and were not estopped from seeking that relief despite having delayed one year before doing so, during which time they had moved in the state court to dismiss the state action.[53] And in *Ernst & Young*, the bankruptcy court permanently enjoined the state plaintiffs from continuing to prosecute their suit even though the state proceedings spanned more than 10 years, during which time the state case had been tried to a judgment, vacated on appeal, and remanded for a retrial that was pending when the federal injunction suit was filed.[54] The bankruptcy court ruled that the passage of time was

no bar to the injunction because the state suit's "present status is back to square one, having been remanded by the State Appellate Court for a new trial."[55]

It should be noted that there is one federal doctrine that could create a timing problem with respect to a party's ability to seek an injunction against a state proceeding under an AIA exception. Specifically, the Supreme Court has held that if a defendant's *res judicata* defense has been presented to and rejected by a state court, the federal Full Faith and Credit Act, 28 U.S.C. § 1738, prohibits a federal court from enjoining the state action on those same grounds if state law bars the defendant from relitigating its *res judicata* defense in another court of the same state.[56] Accordingly, if a defendant in a state-court proceeding believes that it has a *res judicata* or collateral estoppel defense based on a prior judgment in a federal court, it must choose whether to seek a federal injunction on those grounds under an AIA exception or to present those defenses to the state court for decision. If the latter course is taken and the state court rejects the preclusion defense, that decision bars the party from seeking a federal court injunction on that basis under an AIA exception, at least until the state court's decision is reversed or vacated on appeal to a state appellate court.

Other Factors to Consider When Seeking an Injunction under the Exceptions to the Anti-Injunction Act

The premise of this article is that the exceptions to the AIA, when satisfied, provide a defendant in a state action with an efficient and expedient way to successfully terminate the state proceeding. Nonetheless, it is important to note that the Supreme Court has instructed that "the fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue."[57] This caveat finds its expression in two principles.

First, the exceptions to the AIA do not "qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding."[58] Accordingly, even if the requirements of an AIA exception are met, the federal court must weigh the threat to federal interests posed by the state proceeding against any possible unfairness to the state plaintiffs that arguably could result from the injunction and "the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court."[59]

However, the chances that these considerations will tip the scales against an injunction generally seem slim. Indeed, because it is the plaintiff in the state suit that is almost always seeking to evade the federal court's jurisdiction or prior judgment, any claim of prejudice by that plaintiff stemming from a federal injunction against the state proceeding should ring hollow. And because "[t]he principles of federalism and comity that the Anti-Injunction Act is meant to protect include a strong and long-established policy against forum-shopping,"[60] not only should any claims of prejudice by the state plaintiff be rejected, but any comity or federalism concerns likewise should be minimized. As the Seventh Circuit has emphasized, "where such abuses exist, *failure to issue an injunction* may create the very

'needless friction between state and federal courts' which the Anti-Injunction Act was designed to prevent."[61]

Second, the Supreme Court has emphasized that "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy."[62] In particular, "a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area pre-empted by federal law, even when the interference is unmistakably clear."[63] "Rather, when a state proceeding presents a federal issue, even a pre-emption issue, the proper course is to seek resolution of that issue by the state court."[64] The challenge thus facing any litigant that seeks an injunction under an AIA exception is to define for the federal court as clearly as possible precisely how the state proceeding *directly attacks or threatens to nullify* one of the federal interests on which the AIA exceptions are premised.

Conclusion

The principle of noninterference embodied in the AIA applies to *both* the federal and state judiciaries. While the AIA's general prohibition against enjoining state proceedings preserves the constitutional authority of state courts to apply state and federal law to resolve legal disputes brought to them for decision, the exceptions to the AIA are intended to ensure that state courts are not used by litigants to evade federal law. A defendant in a state-court suit that believes that the plaintiff may be doing just that should consider whether the claims or issues in the state proceeding implicate any of the three AIA exceptions. If so, seeking an injunction from the federal court might prove to be the shortest route to a favorable outcome in the state suit.

Craig W. Canetti is an associate in the Supreme Court & Appellate Practice at Mayer Brown LLP in Washington, DC. His appellate practice has encompassed matters involving, among other issues, federal and state class actions, preemption, the First Amendment, ERISA, and accounting malpractice. He can be reached at ccanetti@mayerbrown.com.

---

1 *See Atl. Coast Line R.R. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 285 (1970).
2 *Id.* at 286.
3 *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (quoting *Atl. Coast Line R.R.*, 398 U.S. at 287).
4 28 U.S.C. § 2283 (emphasis added).
5 *See, e.g., In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 134 F.3d 133, 143 (3d Cir. 1998) ("If an injunction falls within one of these three exceptions, the All-Writs Act provides the positive authority for federal courts to issue injunctions of state court proceedings.").
6 *Chick Kam Choo*, 486 U.S. at 146; *see also Atl. Coast Line R.R.*, 398 U.S. at 295 (the exceptions to the AIA "imply that some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case").
7 28 U.S.C. § 2283.

[8] *Mitchum v. Foster*, 407 U.S. 225, 237 (1972) (emphasis added).
[9] *Id.* (quoting *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 516 (1955)).
[10] *Id.* at 238.
[11] *See Mitchum*, 407 U.S. at 242–43 (42 U.S.C. § 1983); *Porter v. Dicken*, 328 U.S. 252, 254–55 (1946) (EPCA); *In re BankAmerica Corp. Sec. Litig.*, 263 F.3d 795, 799, 801–04 (8th Cir. 2001) (PSLRA); *In re James*, 940 F.2d 46, 51 (3d Cir. 1991) (Bankruptcy Code); *Stockslager v. Carroll Elec. Coop. Corp.*, 528 F.2d 949, 953 (8th Cir. 1976) (NEPA).
[12] 28 U.S.C. § 2283.
[13] *In re Diet Drugs*, 282 F.3d 220, 234 (3d Cir. 2002); *see also Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996) (under this exception, an injunction may issue when the "state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation").
[14] *See, e.g., Vendo Co. v. Lektro Vend Corp.*, 433 U.S. 623, 641–42 (1977) (plurality op.); *Winkler*, 101 F.3d at 1202.
[15] *Kline v. Burke Constr. Co.*, 260 U.S. 226, 229 (1922).
[16] *See Vendo Co.*, 433 U.S. at 642.
[17] *See, e.g., In re Diet Drugs*, 282 F.3d at 225–29, 233–39 (affirming a federal injunction against a state court's order that all members of a state class action were to be partially opted out of a parallel federal nationwide class action in which a settlement agreement had been approved by the court); *Winkler*, 101 F.3d at 1202 (holding that a federal injunction is proper "[w]here a litigant's success in a parallel state court action would make a nullity of the district court's [discovery] ruling, and render ineffective its efforts effectively to manage the complex litigation at hand"); *Carlough v. Amchem Prods.*, 10 F.3d 189, 203 (3d Cir. 1993) (affirming an injunction against a state-court class action where the "the stated purpose of the [state] suit [was] to challenge the propriety of the federal class action"); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1335 (5th Cir. 1981) (affirming an injunction against a South Carolina class action where the state court enjoined the defendants—which also were defendants in a federal multidistrict suit—from entering any settlement that contained any release of claims under South Carolina law, thereby "clearly interfer[ing] with the [federal] multidistrict court's ability to dispose of the broader action pending before it").
[18] 17A Charles A. Wright et al., *Federal Practice & Procedure* § 4225 n.10 (3d ed. through 2009 Update).
[19] 28 U.S.C. § 2283.
[20] *Chick Kam Choo*, 486 U.S. at 147.
[21] *Id.*
[22] *Thomas v. Powell*, 247 F.3d 260, 262 (D.C. Cir. 2001).
[23] *See, e.g., San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 336 n.16 (2005).
[24] *See Chick Kam Choo*, 486 U.S. at 147.
[25] *New York Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000).
[26] *See St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 448 (5th Cir. 2000).
[27] *See, e.g., St. Paul Mercury Ins. Co.*, 224 F.3d at 433–34; *New York Life Ins. Co.*, 203 F.3d at 386; *Regions Bank v. Rivet*, 224 F.3d 483, 487 (5th Cir. 2000); *Ernst & Young, LLP v. Reilly (In re Earned Capital Corp.)*, 393 B.R. 362, 364 (Bankr. W.D. Pa. 2008), *aff'd*, *Reilly v. Ernst & Young LLP*, No. 08-cv-01349, slip op. (W.D. Pa. May 26, 2009), *aff'd*, *Ernst & Young, LLP v. Reilly (In re Earned Capital Corp.)*, No. 09-2845, summary order (3d Cir. Nov. 17, 2009).
[28] *Regions Bank*, 224 F.3d at 493.
[29] *See, e.g., id.* at 488.
[30] *See, e.g., In re Diet Drugs*, 282 F.3d at 227–29.
[31] *Summers v. Earth Island Inst.*, 129 S. Ct. 1142, 1149 (2009) (internal quotation omitted).
[32] *See, e.g., St. Paul Mercury Ins. Co.*, 224 F.3d at 433–34, 448–49 (Relitigation Exception permitted an injunction against a state suit in which the plaintiffs sought to nullify a prior state judgment for the defendant insurer on the grounds of fraud, because a federal

court previously had decided the same fraud claims in favor of the same defendant); *New York Life Ins. Co.*, 203 F.3d at 387–88 (Relitigation Exception permitted an injunction against a state suit for breach of an insurance contract and bad faith denial of benefits where the federal court had previously granted summary judgment for the same defendant on the same claims).

[33] *See Samuel C. Ennis & Co. v. Woodmar Realty Co.*, 542 F.2d 45, 47–48 (7th Cir. 1976).

[34] *See id.* at 49.

[35] *Id.* at 48.

[36] *Id.*

[37] *Id.* at 49.

[38] *Id.*

[39] *Id.* at 50 (quoting *Atl. Coast Line R.R.*, 398 U.S. at 295).

[40] *See Ernst & Young*, 393 B.R. at 369, 371.

[41] *Id.* at 371.

[42] *Id.* at 370–71.

[43] *Thomas*, 247 F.3d at 261.

[44] *See id.* at 263.

[45] *Id.* at 264 (internal quotation omitted).

[46] *See id.* at 265.

[47] *Id.* at 262–63 (internal quotation omitted).

[48] *Atl. Coast Demolition & Recycling, Inc. v. Bd. of Chosen Freeholders*, 988 F. Supp. 486, 495 (D.N.J. 1997) (quoting *Hill v. Martin*, 296 U.S. 393, 403 (1935)) (emphasis added); *see also Ernst & Young*, 393 B.R. at 371 (quoting *Atl. Coast Demolition*, 988 F. Supp. at 495).

[49] *Hill*, 296 U.S. at 403; *see also* 17A *Federal Practice and Procedure* § 4222.

[50] *Burr & Forman v. Blair*, 470 F.3d 1019, 1028 (11th Cir. 2006) (emphasis added).

[51] *See* 17A Linda S. Mullenix, *Moore's Federal Practice* § 121.08[5] (2010) ("[A] mere delay in requesting a federal stay while participating in state court proceedings does not preclude the federal court from issuing a stay once it is finally requested. A federal court may issue a stay as long as there is no intent to relinquish the federal right.").

[52] *Id.* at 642.

[53] *See* 542 F.2d at 48.

[54] *See* 393 B.R. at 367–68, 371.

[55] *Id.* at 371.

[56] *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 524–25 (1986).

[57] *Chick Kam Choo*, 486 U.S. at 151.

[58] *Mitchum*, 407 U.S. at 243; *see also Regions Bank*, 224 F.3d at 489 (even if the requirements of an AIA exception are satisfied, a reviewing court must also determine whether "the principles of equity, comity, and federalism supported [the] issuance of an injunction").

[59] *Chick Kam Choo*, 486 U.S. at 146 (internal quotation marks omitted).

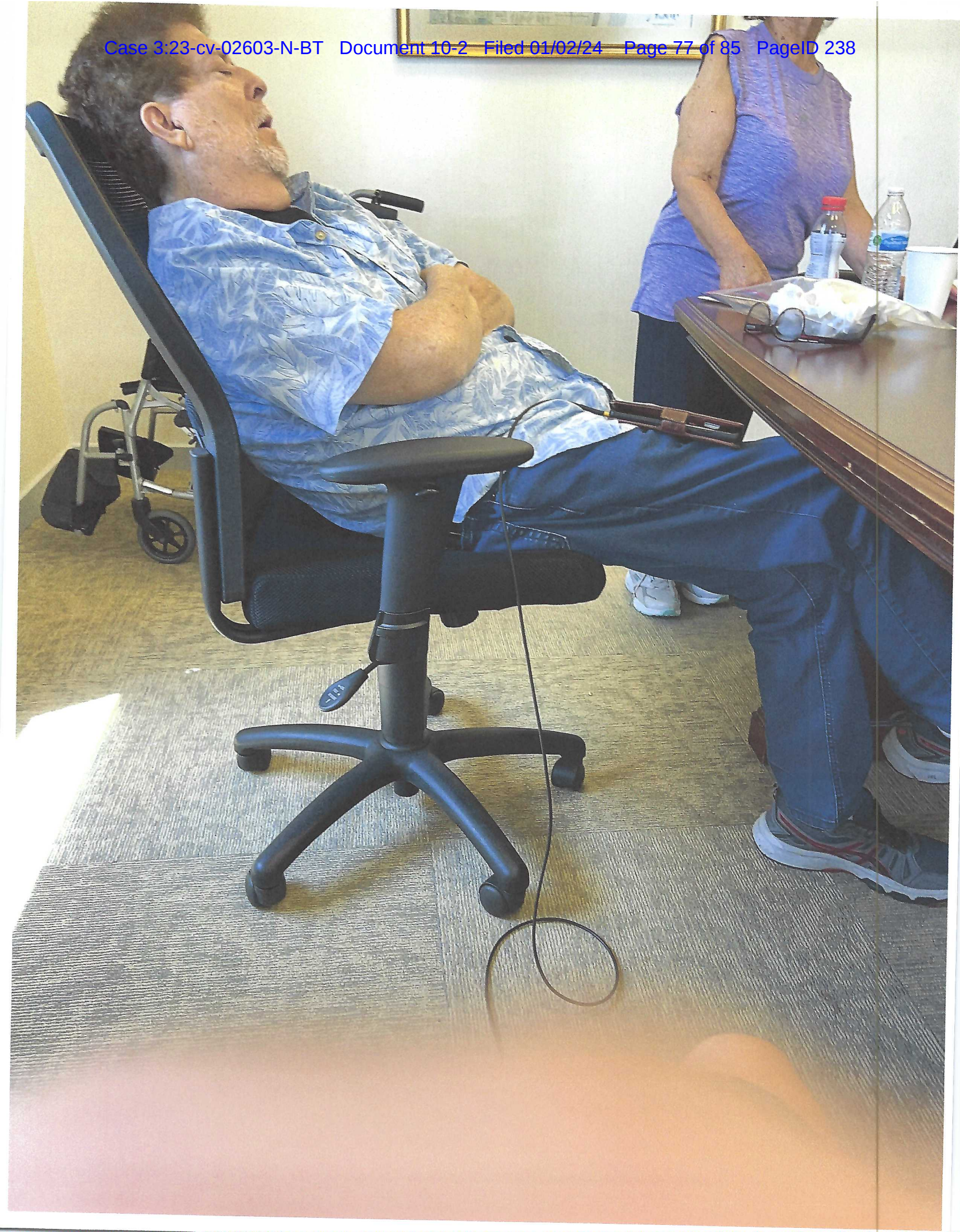
[60] *Winkler*, 101 F.3d at 1202.

[61] *Id.* at 1203 (quoting *Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940)) (emphasis added).

[62] *Atl. Coast Line R.R.*, 398 U.S. at 297.

[63] *Id.* at 294.

[64] *Chick Kam Choo*, 486 U.S. at 149–50.



PREPARED BY THE COURT

JOHN F. KENNEDY, HILDA T. KENNEDY,

Plaintiff(s),

v.

COOPER LEVENSON LAW FIRM, et al.

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC

Docket No.: ATL-L-3744-21

Civil Action

ORDER

THIS MATTER having been brought before the Court by Plaintiffs, pro se, and the court having read and considered the papers submitted, and for good cause shown;

IT IS on this 1st day of June, 2023, **ORDERED**, as follows:

1. Plaintiffs' Motion to Compel Discovery and Unseal Court Records is hereby **GRANTED IN PART**;
2. The Motion to Compel Discovery is **DENIED** without prejudice as moot, in light of correspondence filed by Plaintiffs on May 24, 2023;
3. The Motion to Unseal Court Records in the matter of ATL-L-2208-16 is **GRANTED**, contingent on an *in camera* review by the Court.

IT IS FURTHER ORDERED that a copy of this Order be served by the moving party upon all other parties or their attorneys, if any, within seven (7) days of the date listed above.

HON. JOHN C. PORTO, P.J. Cv.

JOHN F. KENNEDY, HILDA T. KENNEDY, Plaintiffs, v. COOPER LEVENSON LAW FIRM, et al. Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO: ATL-L-3744-21 CIVIL ACTION ***MEMORANDUM OF DECISION PURSUANT TO RULE 1:6-2(f)***

Plaintiffs filed this Notice of Motion to Compel Discovery and Unseal Court Records on April 27, 2023. Defendants filed correspondence, including the Certification of Randolph Lafferty, Esquire on May 12, 2023.[1] Plaintiffs also seek access to records located in the Defendant's law office. Plaintiffs filed correspondence with the Court on May 24, 2023.

The discovery end date is June 1, 2023. Trial is not currently scheduled.

Movants request this Court enter an Order compelling the Defendants allow them access to the case files Cooper Levenson kept from the 2015 and 2016 cases, and for the Court to unseal the certification associated with ATL-L-2208-16 case which was sealed under order by Judge Johnson, (Ret.) on June 26, 2018.

The Motion is unopposed.

Having reviewed the above motion and all papers submitted in support thereof, the Court finds it is meritorious on its face. Pursuant to R. 1:6-2, the Motion is GRANTED in PART, essentially for the reasons set forth in the moving papers. The Motion to Compel access to case files is DENIED without Prejudice as moot, due to the information in the May 24, 2023 correspondence from Plaintiffs indicating an Order is not necessary. The motion to unseal the ATL-L-2208-16 case is GRANTED, contingent on an *in camera* review by the Court.

[1] Randolph Lafferty is one of the Defendants in the present lawsuit and previously represented the Plaintiffs in two other civil lawsuits in 2015 and 2016.

An Order commensurate with this Court's decision is entered on eCourts.

Dated: June 1, 2023

JOHN C. PORTO, P.J.Cv.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

HILDA T. KENNEDY, Plaintiff, v. THE NEW JERSEY COURT SYSTEM, *et al.*, Defendants.	HONORABLE KAREN M. WILLIAMS Civil Action No. 22-05797-KMW-MJS **MEMORANDUM ORDER**

WILLIAMS, District Judge:

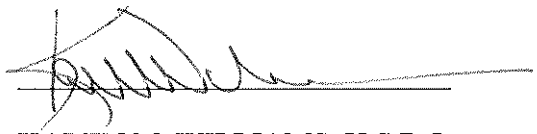
1. The Court has received and reviewed Plaintiff's request to stay her state court proceedings (ECF No. 32).
2. Plaintiff requests a stay pursuant to the Anti-Injunction Act, 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction or effectuate its judgments.").
3. In this matter, there is no express Act of Congress applicable, and Plaintiff believes that her case falls within the "necessity in aid" exception.
4. The "necessity in aid" exception has been primarily found in circumstances relating to land and property, *see Std. Microsystems Corp. v. Tex. Instruments, Inc.*, 916 F.2d 58, 60 (2d Cir. 1990) (collecting cases), and also to complex matters such as a class action. *In re Asbestos Sch. Litig.*, No. 83-0268, 1991 WL 61156 at *2 (E.D. Pa, Apr. 16, 1991). Further, the "necessity in aid" exception can be applicable in circumstances "where a federal court has made conclusive rulings and their effect may be undermined by threatened relitigation in state courts," *Std.*

Microsystems Corp., 916 F.2d at 60. Neither of these circumstances are present in Plaintiff's state action, and in fact, the existence of the state court action does not in any way impair the jurisdiction of the federal court or its ability to render justice related to her federal claims.

5. The exceptions related to the Anti-Injunction Act do not apply to Plaintiff's case.

Thus, it is clear that this Court must not interfere with the state court proceeding and must decline Plaintiff's request for a stay of her state court proceeding.

Dated: December 28, 2023



KAREN M. WILLIAMS, U.S.D.J.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 116
Trenton, New Jersey 08625
Attorney for Defendant,
The New Jersey Court System

By: Thomas Sindel (340392021)
Deputy Attorney General
609-376-2986
Thomas.Sindel@law.njoag.gov
DOL# 23-00015

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

HILDA T. KENNEDY, Plaintiff, v. THE NEW JERSEY COURT SYSTEM, Defendant.		HON. KAREN M. WILLIAMS U.S.D.J. HON. MATTHEW J. SKAHILL, U.S.M.J. CIVIL ACTION NO. 1:22-CV-05797-KMW-MJS **APPLICATION FOR AN EXTENSION OF TIME TO ANSWER, MOVE, OR OTHERWISE REPLY PURSUANT TO LOCAL CIVIL RULE 6.1**

Application is hereby made for a Clerk's Order extending the time within which Defendant, The New Jersey Court System, may answer, move, or otherwise reply to the First Amended Complaint filed by Plaintiff Hilda T. Kennedy herein, and it is represented that:

1. No previous extension has been obtained.

2. On September 29, 2023, the Court dismissed Plaintiff's NJLAD and ADA claims stemming from ATL-L-2208-16 and ATL-L-001167-15 with prejudice. See ECF No. 24.

3. The Court granted leave for Plaintiff to amend her Complaint to clarify her ADA claims arising solely from her landlord tenant (ATL-L-000924-22) and malpractice (ATL-L3744-21) state court cases. Id.

4. The Court allotted Plaintiff thirty (30) days from the issuance of its Order to file an amended complaint. Id.

5. After two separate extensions at the request of Plaintiff, ECF No. 27 and ECF No. 29, Plaintiff filed her First Amended Complaint on December 8, 2023. See ECF No. 30.

6. The New Jersey Court System's time to answer, move, or otherwise reply expires on or about December 22, 2023. See Fed. R. Civ. Pro. 15(a)(3).

7. Pursuant to Local Civil Rule 6.1(b), Defendant, The New Jersey Court System, requests that the time to answer, move, or otherwise reply be extended for 14 days, or until January 5, 2024.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

BY: /s/ Thomas Sindel
Thomas Sindel
Deputy Attorney General
340392021

DATE: December 19, 2023

cc: Hilda T. Kennedy (via CM/ECF and regular mail)

The above application is ORDERED GRANTED and the time within which Defendants shall answer, move, or otherwise reply is extended to _____.

MELISSA E. RHOADS, ESQ., CLERK

_____
Deputy Clerk

DATED: