

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

MICHAEL J. MENKUS,)	
Plaintiff,)	
)	Civil Action No. 061-08834-33
vs.)	
)	
DAVID A. DODD,)	
Judge of the Cobb)	
County Probate Court ,)	
)	
Defendant)	

VERIFIED AMENDED COMPLAINT

Plaintiff Michael J. Menkus, by counsel, John R. Monroe, states the following as his Complaint:

1. Plaintiff is a natural person who resides in Cobb County, Georgia.
2. Defendant David A. Dodd is a natural person who holds the office of Judge of the Cobb County Probate Court, and has offices at 32 Waddell Street; Marietta, Cobb County, Georgia 30090.
3. On or about October 17, 2006, Plaintiff applied to Defendant to issue Plaintiff a renewal Georgia firearms license (“GFL”), pursuant to OCGA § 16-11-129.
4. At the time of his application, Plaintiff requested of the clerk processing his application that he be issued a temporary renewal GFL, pursuant to O.C.G.A. § 16-11-129(i). Plaintiff had in his possession \$1.00 to pay the fee required by O.C.G.A. § 16-11-129(i)(5).
5. The clerk processing Plaintiff’s application told Plaintiff that Defendant no longer issues temporary renewal GFLs, because of a change in the law effective July 1, 2006.

6. Plaintiff informed the clerk that the law regarding issuance of temporary renewal GFLs had not changed, and the clerk referred Plaintiff to clerk Charles Evans (“Evans”).
7. Plaintiff repeated to Evans his request that Plaintiff wished to be issued a temporary renewal GFL pursuant to O.C.G.A. § 16-11-129(i).
8. Evans told Plaintiff that because of a change in the law, Defendant no longer issues temporary renewal GFLs.
9. Plaintiff provided Evans with a current copy of O.C.G.A. § 16-11-129(i), printed out from the general assembly’s internet site, to show Evans that temporary renewal GFLs still are required by law.
10. Evans told Plaintiff that Evans would review the matter with Defendant Dodd and that Plaintiff should call him later that day.
11. On October 18, 2006, Plaintiff called Evans, and Evans returned Plaintiff’s call the same day, recording a statement stating that Defendant refuses to issue Plaintiff a temporary renewal GFL pursuant to O.C.G.A. § 16-11-129.
12. On October 19, 2006, Plaintiff’s attorney wrote Defendant a letter, sent via facsimile and email, asking Defendant to issue Plaintiff a temporary renewal GFL, and to respond in any event by October 26, 2006. A true and correct copy of the letter is attached as Exhibit 1. Defendant has not replied to the letter.
13. O.C.G.A. § 16-11-129(i)(1) provides, “Any person who holds a license under this Code section to carry a pistol or revolver may, at the time he applies for a renewal of the license, also apply for a temporary renewal license if less than 90 days

remain before expiration of the license he then holds or if his previous license has expired within the last 30 days.”

14. On October 17, 2006, there were less than 90 days remaining before expiration of Plaintiff’s GFL.
15. O.C.G.A. § 16-11-129(i)(2) requires that “Unless the judge of the probate court knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license, the judge shall at the time of application issue a temporary renewal license to the applicant.”
16. On information and belief, Defendant neither knows, nor has he been made aware of, any fact which would make Plaintiff ineligible for a five-year renewal GFL.
17. At the time of Plaintiff’s application for a renewal GFL, he also applied for a temporary renewal GFL.
18. Defendant refused to issue Plaintiff a temporary renewal GFL “at the time of application.”
19. Defendant has subsequently refused to issue Plaintiff a temporary renewal GFL, in spite of repeated requests.
20. By refusing to issue Plaintiff a temporary renewal GFL, Defendant violated the Georgia Firearms and Weapons Act, specifically O.C.G.A. § 16-11-129(i)(2).
21. Plaintiff commenced this action on October 27, 2006, requesting, among other things, an order of mandamus requiring Defendant to issue Plaintiff a temporary renewal GFL pursuant to O.C.G.A. § 16-11-129(i)(2).
22. After being served with the summons and original complaint, Defendant, on October 31, 2006, issued Plaintiff a document entitled “Temporary Firearms

License.” A true and correct copy of this document is attached as Exhibit A, with certain personal information redacted.

23. The Temporary Firearms License issued by Defendant to Plaintiff contains the words, “NOTICE TO FEDERAL FIREARMS LICENSEES: O.C.G.A. 16-11-129(i) does not direct the judge of the probate court to conduct a criminal background check for the issuance of Temporary Firearms Licenses. **No check on the National Instant Background Check System has been conducted on this individual for issuance of the Temporary Firearms License. This Temporary License is not intended to create an exception to the required background check at the time of transfer.**” [emphasis in original].
24. O.C.G.A. § 16-11-129(i)(3) specifies the form of a temporary renewal GFL, and such specifications do not include the Notice contained in the Temporary Firearms License issued by Defendant to Plaintiff.
25. O.C.G.A. § 16-11-129(i)(4) provides that a temporary renewal GFL “shall be valid in the same manner and for the same purposes as a five-year license.”
26. According to the current rulings of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (“BATFE”), a GFL may be used as an exception to the normal background check requirements involved in purchasing a firearm from a Federal Firearms Licensee (“FFL”). A true and correct copy of a July 1, 2006 letter from BATFE to Georgia FFLs, explaining this exception, is attached as Exhibit B.
27. By placing the Notice on the Temporary Firearms License he issued to Plaintiff, Defendant issued a document that does not conform to the requirements of

temporary renewal GFLs contained in O.C.G.A. § 16-11-129(i)(4), in that it purports to prevent the Temporary Firearms License from being used as an alternative to the background check, when five-year GFLs may be used for that purpose.

28. O.C.G.A. § 16-11-129(d) requires that GFLs be issued to qualified applicants “not later than 60 days after the date of application.”

29. More than 60 days have elapsed since Plaintiff applied for his renewal GFL, and Defendant has yet to issue him one.

Prayer for Relief

Based on the foregoing, Plaintiff demands the following relief:

1. A writ of mandamus, ordering Defendant to issue a temporary renewal GFL to Plaintiff in the form of a paper receipt indicating the date on which the court received the renewal application and showing the name, address, sex, age, and race of the applicant without delay.
2. A declaratory judgment that OCGA § 16-11-129(i) requires Defendant to issue a temporary renewal GFL to a renewal GFL applicant at the time of application for a renewal GFL, unless Defendant knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license.
3. A declaratory judgment that the Temporary Firearms License issued by Defendant to Plaintiff does not conform to the requirements of O.C.G.A. § 16-11-129(i)(3) and (4).

4. A permanent injunction requiring Defendant to issue a temporary renewal GFL to a renewal GFL applicant if the applicant meets the requirements of O.C.G.A. § 16-11-129(i).
5. A declaratory judgment that O.C.G.A. § 16-11-129(d)(4) requires Defendant to issue eligible GFL applicants a GFL not later than 60 days from the date of application.
6. A writ of mandamus, ordering Defendant to issue Plaintiff a renewal GFL.
7. A permanent injunction requiring Defendant to issue GFLs to eligible applicants not later than 60 days from the date of their applications.
8. Costs to bring and maintain this action.

Dated the 18th day of January, 2007.

John R. Monroe,
Attorney for Plaintiff
9640 Coleman Road
Roswell, GA 30075
678-362-7650
State Bar No. 516193

VERIFICATION

I, Michael J. Menkus, plaintiff in this case, upon oath swear or affirm that I know of my own knowledge that the factual allegations stated in this Complaint are true, except that allegations identified as being based on information and belief are true to the best of my knowledge.

Michael J. Menkus

The above named Michael J. Menkus appeared before me on the 18th day of January 2007, and swore and subscribed to this document in Fulton County, Georgia.

Notary Public

My commission expires _____

Certificate of Service

I certify that I served the following with a copy of the foregoing Amended Complaint on January 18, 2007 via U.S. Mail:

H. William Rowling, Jr., Esq.
Senior Associate County Attorney
Cobb County Attorney's Office
100 Cherokee Street, Suite 595
Marietta, Georgia 30090-9689

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