

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MICHAEL TANKERSLEY,
1060 N. Montana Street,
Arlington, VA 22205,

Plaintiff

v.

JAMES W. ALMAND, in his official capacity as Trustee of the Client Protection Fund; DOUGLAS M. BREGMAN, in his official capacity as Trustee of the Client Protection Fund; BARBARA ANN SPICER, in her official capacity as Trustee of the Client Protection Fund; WILLIAM V. MEYERS, in his official capacity as Trustee of the Client Protection Fund; CECELIA ANN KELLER, in her official capacity as Trustee of the Client Protection Fund; PATRICK A. ROBERSON, in his official capacity as Trustee of the Client Protection Fund; LEONARD H. SHAPIRO, in his official capacity as Trustee of the Client Protection Fund; DONNA HILL STATEON, in her official capacity as Trustee of the Client Protection Fund; DAVID WEISS, in his official capacity as Trustee of the Client Protection Fund; CLIENT PROTECTION FUND OF THE BAR OF MARYLAND,

2011 Commerce Park Drive

Annapolis, Anne Arundel County, MD 21401;

CHIEF JUDGE MARY ELLEN BARBERA, in her official capacity; JUDGE SALLY D. ADKINS, in her official capacity; JUDGE LYNNE A. BATTAGLIA, in her official capacity; JUDGE CLAYTON GREENE JR., in his official capacity; JUDGE GLENN T. HARRELL JR., in his official capacity; JUDGE ROBERT N. MCDONALD, in his official capacity; JUDGE SHIRLEY M. WATTS, in her official capacity; BESSIE M. DECKER, in her official capacity as Clerk of the Court of Appeals; MARYLAND COURT OF APPEALS,

361 Rowe Boulevard

Annapolis, Anne Arundel County, MD 21401,

Defendants

Civil No. 14 - _____

Hon. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Social Security Numbers (or “SSNs”) are nine-digit numerical identifiers created by the federal government and unique to each individual. The accumulation of SSNs in government and business databases creates attractive opportunities for identity thieves and others who seek to exploit these identifiers. *See, e.g.,* Mike Denison, *Maryland state agencies hit by cyberattacks, records show*, Maryland Daily Record (Apr. 18, 2014), at <http://thedailyrecord.com/2014/04/18/maryland-state-agencies-hit-by-cyberattacks-records-show>; Colin Campbell, *More than 309,000 identities exposed in University of Maryland cyberattack*, Balt. Sun (Feb. 20, 2014), at <http://www.baltimoresun.com/news/maryland/bs-md-university-of-maryland-data-breach-20140219,0,2321285>.

2. Because of the privacy concerns inherent in the disclosure of SSNs, Congress enacted Section 7 of the federal Privacy Act, which forbids federal, state, and local government agencies from denying a person “any right, benefit, or privilege” because the person refused to share his or her SSN. 5 U.S.C. § 552a note.

3. In November 2013, the Maryland Court of Appeals amended the Maryland Rules of Procedure regulating the practice of law to provide that the Court of Appeals shall prohibit Maryland attorneys from practicing law in the State if they fail to provide their SSNs to the Client Protection Fund of the Bar of Maryland.

4. Plaintiff Michael Tankersley, a Maryland attorney who has been licensed to practice law in Maryland since 1986, refused on Privacy Act grounds to provide his SSN to the Client Protection Fund. The Court of Appeals entered an order pursuant to its new rule prohibiting Tankersley from practicing law in the State of Maryland.

5. To void the illegal suspension of his law license and to vindicate his rights under the Privacy Act, Tankersley seeks declaratory and injunctive relief under 42 U.S.C. § 1983 and the Supremacy Clause, U.S. Const. Art. VI.

PARTIES

6. Plaintiff Michael Tankersley is an attorney who has been licensed to practice law in Maryland since 1986 and in the District of Columbia since 1987. For the past twenty-eight years, Tankersley has been a member in good standing of the Bar of Maryland and, with the exception of the Court of Appeals' March 20, 2014 Order, has never been subject to discipline or suspension by any bar.

7. Defendant Client Protection Fund of the Bar of Maryland (CPF) is a body created by the Maryland Legislature "to maintain the integrity of the legal profession by paying money to reimburse clients for losses caused by defalcation by lawyers." Md. Code, Occup. & Prof. Art. § 10-311(b). Defendants James W. Almand, Douglas M. Bregman, Barbara Ann Spicer, William V. Meyers, Cecelia Ann Keller, Patrick A. Roberson, Leonard H. Shapiro, Donna Hill Stateon, and David Weiss (collectively, "The Trustees"), are the trustees of the CPF. Under Maryland Rule of Procedure 16-811.6, the Trustees are responsible for collecting Maryland lawyers' SSNs and for forwarding to the Maryland Court of Appeals a list of attorneys who have not provided their SSNs and a proposed order suspending these attorneys from the practice of law. The Trustees are sued in their official capacities only.

8. Defendants Chief Judge Mary Ellen Barbera, Judge Sally D. Adkins, Judge Lynne A. Battaglia, Judge Clayton Greene Jr., Judge Glenn T. Harrell Jr., Judge Robert N. McDonald, and Judge Shirley M. Watts (collectively, "the Judges"), are the judges of the Maryland Court of Appeals. Defendant Bessie M. Decker is the Clerk of the Court of Appeals. Defendant Maryland Court of Appeals is the body responsible under Maryland Rule of Procedure 16-811.6 for suspending lawyers

who refuse to provide their SSNs to the CPF. The Judges and the Clerk all signed the order prohibiting Tankersley from practicing law in the State of Maryland. They are sued in their official capacities only.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 42 U.S.C. § 1983 and the Supremacy Clause pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). This Court also has jurisdiction over the § 1983 claim pursuant to 28 U.S.C. § 1343(a)(4) (jurisdiction over claims for equitable relief under civil rights statute).

10. Venue lies in this district pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the claim occurred here.

FACTUAL ALLEGATIONS

11. In 1974, Congress enacted the Privacy Act. 5 U.S.C. § 552a. Congress, “recognizing the dangers of widespread use of SSNs as universal identifiers,” *Greidinger v. Davis*, 988 F.2d 1344, 1353 (4th Cir. 1993), and identifying this issue as “one of the most serious manifestations of privacy concerns in the Nation,” S. Rep. No. 1183, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 6916, 6943, included in the Privacy Act a provision stating (with exceptions not relevant here) that “[i]t shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.” Pub. L. 93-579, § 7(a)(1), *at* 5 U.S.C. § 552a note.

12. The Maryland Court of Appeals may require a lawyer to pay an annual fee to the CPF and may specify the penalties, including suspension and disbarment, for practicing law without having paid the annual fee. Md. Code, Occup. & Prof. Art. § 10-311(c).

13. Plaintiff Tankersley is not in default in the payment of the annual fee to the CPF.

14. No statute authorizes the CPF or the Court of Appeals to suspend or disbar an attorney for failure to provide his or her SSN to the CPF.

15. In November 2013, the Court of Appeals adopted Maryland Rules of Procedure 16-811.5 and 16-811.6. Under Rule 16-811.5(a)(1)(A), “each attorney admitted to practice before the Court of Appeals . . . shall (A) provide to the treasurer of the [Client Protection] Fund the attorney’s Social Security number.” Under Rule 16-811.6(b)(1), the CPF shall notify any attorney who has failed to provide his or her SSN that he or she has 30 days to do so or be suspended from the practice of law. Under Rule 16-811.6(d), if the attorney has not provided the SSN within 30 days of the notice of delinquency, the CPF shall propose to the Court of Appeals, and the Court of Appeals shall without further process enter, an order prohibiting the attorney from practicing law in Maryland.

16. On February 10, 2014, defendant James W. Almand, Chair of the CPF, sent Tankersley a notice informing him that he had not provided his SSN and that he had 30 days to do so or be suspended from the practice of law in Maryland. This notice is attached to the Complaint as Exhibit A.

17. On March 10, Tankersley sent Almand a letter explaining that he would not provide his SSN because of concerns about privacy and identify theft and pointing out that suspending him as a result of his refusal would violate the Privacy Act. This letter is attached as Exhibit B.

18. On March 20, the Court of Appeals entered an order, signed by all of the Judges and the Clerk, “prohibiting from the further practice of law in this State attorneys whose names are set forth in the list attached to the Order, and who are in default in the payment of annual assessments to the Client Protection Fund of the Bar of Maryland.” The list of attorneys identified included Plaintiff Tankersley. Tankersley received this order along with a cover letter from the Court of Appeals indicating that he was being suspended because he is “in DEFAULT for not providing [his] social security number” to the CPF

(as opposed to having failed to pay fees). This letter and the portion of the order that Tankersley received in the mail are attached as Exhibit C.

19. Under Maryland Rules of Procedure, Tankersley has no avenue to appeal his suspension.

CAUSES OF ACTION

COUNT I: Violation of federal statutory right under Section 7 of the Privacy Act (42 U.S.C. § 1983)

20. During all the events herein described, defendants were acting under color of state law as officials, agencies, or departments of the State of Maryland.

21. Defendants have caused a “State . . . agency” to “deny” to Tankersley a “right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number,” Pub. L. 93-579, § 7(a)(1), *at* 5 U.S.C. § 552a note, in violation of Tankersley’s rights under Section 7(a) of the Privacy Act.

22. Maryland Rules of Procedure 16-811.5 and 16-811.6 violate the Privacy Act and are therefore invalid because these Rules deny attorneys who refuse to disclose their SSNs the right, benefit, or privilege of practicing law in the State of Maryland.

COUNT II: Enforcement of state regulation in conflict with federal statute (Supremacy Clause, U.S. Const. Art. VI)

23. Defendants have caused a “State . . . agency” to “deny” to Tankersley a “right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number,” Pub. L. 93-579, § 7(a)(1), *at* 5 U.S.C. § 552a note, in violation of Tankersley’s rights under Section 7(a) of the Privacy Act.

24. Insofar as they condition an attorney’s practice of law on disclosure of his or her SSN and require the suspension of an attorney from the practice of law for refusing to provide his or her SSN,

Maryland Rules of Procedure 16-811.5 and 16-811.6 conflict with Section 7(a) of the Privacy Act and are therefore invalid on their face.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court:

A. Declare, pursuant to 28 U.S.C. § 2201, that Maryland Rules of Procedure 16-811.5 and 16-811.6 are invalid on their face to the extent that they condition the continued practice of law upon an attorney's disclosing his or her SSN;

B. Declare, pursuant to 28 U.S.C. § 2201, that the order suspending Tankersley from the practice of law was invalid as a violation of his federal rights and as contrary to federal law;

C. Enjoin Defendants from continuing to deny Tankersley the privilege of practicing law in Maryland because of his refusal to disclose his SSN;

D. Award plaintiffs costs and reasonable attorneys' fees incurred in this action; and

E. Grant such other relief as the Court may deem just and proper.

Dated: May 22, 2014

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