

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

AMERICAN ATHEISTS, INC. et al,

Plaintiffs,

v.

Case No. 3:06-cv-720-J-25TEM

**THE CITY OF JACKSONVILLE, FLORIDA,
et al,**

Defendants.

ORDER

This Cause is before the Court on Plaintiffs' Motion for Temporary Restraining Order (Dkt. 5) (Motion). This pleading was filed on August 11, 2006 at 1:13 p.m. The Court held on hearing on this matter at approximately 4:42 p.m. At the hearing, Defendants indicated that counsel received the Motion at approximately 3:30 p.m. that afternoon. The Court's records support this representation.

As previously noted in this Court's prior Order, Plaintiffs seek a temporary restraining order (TRO) against Defendants that would prevent Defendants from sponsoring a "prayer rally" scheduled for August 12, 2006 beginning at 2:00 p.m.

While the Court notes that Plaintiffs' renewed request for a temporary restraining order appears to meet the form requirements of Local Rule 4.05, the fact remains that Plaintiffs seek to have the Court enjoin the event without Defendants being afforded a *meaningful* opportunity to properly respond to Plaintiffs' request.

Rule 65 (b) of the Federal Rules of Civil Procedure requires a TRO applicant's attorney

to certify to the Court the reasons that notice should not be required. While the Motion maintains that notice and a hearing was “impossible” given the short time frame, Plaintiffs fail to adequately explain why the instant motion was not filed until the day before the event. It appears that the “impossibility,” if any, was created by Plaintiffs.

Plaintiffs’ counsel allowed herself more than three days to draft the Complaint and Motion for Temporary Restraining Order but choose not to notify the Defendants of same until directed to by the Court. Indeed, Plaintiffs evidently did not make *any* attempt to personally serve the Complaint or the Motion until this Court directed Plaintiffs to do so.

Out of an abundance of caution, however, the Court elected to give Plaintiffs an opportunity to explain why Counsel did not draft and serve the motion prior to this afternoon. At the hearing on this issue, Plaintiffs failed to offer any explanation for failing to provide timely notice to the Defendants. Rather, Plaintiffs’ Counsel asked that the untimely notice not prejudice her clients’ case.

Counsel’s actions do not prejudice the Court against her clients. However, the untimeliness of the filing and notice did effect Defendants’ opportunity to adequately respond to the Motion. Temporary restraining orders are granted upon a finding made after the Court conducts an analysis that addresses the harm to *all* parties.

While the Court is aware of Plaintiffs’ time limitations, the Motion in the instant case was filed the day before the event creating an “artificial air of emergency.”¹ Defendants were

¹For more than twenty years, Courts have articulated displeasure at this practice. *Brockum Int’l, Inc. v. Various John Does*, 551 F.Supp. 1054, 1055 (E.D.Wis.1982)(Motion filed 6 days before event); *Plant v. Doe*, 19 F.Supp.2d 1316, 1317 (S. D. Fla. 1998)


(“Initially, the Court must express its serious displeasure with the method in which Plaintiffs and Plaintiffs’ counsel chose to litigate this case. First, Plaintiffs elected to file their case the day before the [date of the event]..... creating an artificial air of emergency....”)

allowed an incredibly short time to respond; Defendants were denied a *meaningful* opportunity to be heard. Accordingly, it is **ORDERED**:

Plaintiffs' Motion for Temporary Restraining Order (Dkt. 5) is **DENIED**.

DONE AND ORDERED at Jacksonville, Florida, this 11th day of August 2006.

Copies to:
Counsel of Record


HENRY LEE ADAMS, JR.
United States District Judge
