

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIV. I**

\_\_\_\_\_  
RALPH BAZE, )  
 )  
and, )  
 )  
THOMAS C. BOWLING, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JONATHAN D. REES, )  
Commissioner, )  
Kentucky Department of Corrections, )  
Frankfort, Kentucky )  
 )  
GLENN HAEBERLIN, )  
Warden, Kentucky State )  
Penitentiary, Eddyville Kentucky, )  
 )  
and, )  
 )  
HON. ERNIE FLETCHER, )  
Governor of Kentucky )  
 )  
Defendants. )  
\_\_\_\_\_ )

CIV. ACTION # 04-CI-1094

**RENEWED MOTION FOR IMMEDIATE TRIAL DATE  
AND MOTION FOR WRITTEN ORDER  
DENYING DEFENDANTS' MOTION TO DISMISS  
ON LETHAL INJECTION CLAIMS**

## NOTICE

Please take notice that this Motion has been docketed for consideration in the above referenced Court on Wednesday, October 13, 2004 at 9:00 a.m.

## MOTION

Plaintiffs, by counsel, pursuant to CR 40 and CR 57, respectfully move this Court to assign the above-styled case a trial date as soon as possible. In support of this motion, Plaintiffs state as follows:

1. This an action for declaratory and injunctive relief; as such the Rules of Civil Procedure contemplate advancement on the Court's docket. *See* CR 57.
2. Plaintiff Bowling's petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit was denied by the United States Supreme Court on October 4, 2004.
3. Bowling's execution could be set at any moment.
4. General counsel for the Governor, the Honorable John Roach, has notified Bowling's counsel that the attorney general's office will seek a warrant very soon and that counsel should consider expediting their request for clemency.
5. This Court has orally denied Defendants' motion to dismiss the lethal injection claims (Plaintiffs also request that this Court issue an immediate written order denying Defendants' motion to dismiss the lethal injection claims).

6. There are no impediments to going to trial immediately and the rules of civil procedure do not require waiting for further responsive pleadings before scheduling a trial date.
7. This lawsuit was filed on August 9, 2004, two months ago. From the onset of this litigation, Plaintiffs have attempted to expedite review of the case. They were ready to go to trial almost immediately and so notified Defendants and this Court.

Defendants have had two months to prepare for a trial that involves few witnesses including witnesses that Defendants know well. Plaintiffs have been diligent in proceeding with each aspect of this case. Defendants, however, continuously attempt to delay a trial on the merits. Defendants have the authority to await the conclusion of this litigation prior to scheduling Bowling's execution, but choose not to do so. In light of this Court's ruling denying Defendants' motion to dismiss, and information that Bowling's execution will be scheduled almost immediately by Defendants despite their attempts to prevent a trial on this issue, Plaintiffs respectfully request that this Court set the matter for trial as soon as possible.

RESPECTFULLY SUBMITTED

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DAVID M. BARRON  
Assistant Public Advocate  
Department of Public Advocacy  
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502-222-6682

October 8, 2004

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIV. I**

RALPH BAZE

PLAINTIFFS

and

THOMAS C. BOWLING

V.

JOHN D. REES, Commissioner,  
Kentucky Department of Corrections

and

GLENN HAEBERLIN, Warden,  
Kentucky State Penitentiary

and

HON. ERNIE FLETCHER, Governor,  
Commonwealth of Kentucky

DEFENDANTS

**ORDER**

**CASE NUMBER 04-CI-1094**

**IT IS HEREBY ORDERED** that Plaintiffs' renewed motion for an immediate trial date is granted. Trial of this case is set to begin on \_\_\_\_\_, \_\_\_\_\_, 2004.

Date: October \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge, Franklin Circuit Court

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I caused a true and correct copy of the foregoing  
**RENEWED MOTION FOR IMMEDIATE TRIAL DATE  
AND MOTION FOR WRITTEN ORDER  
DENYING DEFENDANTS' MOTION TO DISMISS  
ON LETHAL INJECTION CLAIMS**  
to be served VIA PERSONAL DELIVERY on the following individuals:

Hon. Jeff Middendorf  
General Counsel  
Department of Corrections  
2439 Lawrenceburg Road  
P. O. Box 2400  
Frankfort, Kentucky 40602

Hon. David Smith  
Assistant Attorney General  
1024 Capital Center Drive  
Frankfort, Kentucky 40601

Hon. John Roach  
General Counsel  
Office of the Governor  
The Capital  
700 Capital Avenue  
Frankfort, Kentucky 40601

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COUNSEL FOR PLAINTIFFS

October 8, 2004.