

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

FRANK J. LAWRENCE, JR.,

Plaintiff,

FIRST AMENDED COMPLAINT
CIVIL NO. 4:05-cv-14 RH/WCS

v.

PAUL J. SCHWIEP, in his official capacity as Chairman
of the Florida Board of Bar Examiners;
ELEANOR MITCHELL HUNTER, in her official capacity
as Executive Director of the Florida Board of
Bar Examiners; and Hon. BARBARA J. PARIENTE, in her official
capacity as Chief Justice of the Florida Supreme Court.

Defendants.

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INTRODUCTORY STATEMENT

FRANK J. LAWRENCE, JR., Plaintiff in this matter, brings this action by
and through his attorney, Dennis Dubuc and states as follows: Plaintiff is a present

applicant for a license to practice law in the State of Florida, whose application for admission has been pending since November 2001. Plaintiff seeks relief from the operation of certain Florida licensing rules and practices, which Plaintiff contends are unconstitutional.

The licensing procedures described herein attest to constitutional injury that can be directed at any applicant, at any time, during Florida's attorney licensing process. These unconstitutional procedures have been used against Plaintiff in retaliation for his exercise of protected First Amendment activities, namely, Plaintiff's criticism of the Florida licensing system and its officials, for petitioning the government for redress of grievances, and for his involvement in Lawrence v. Van Aken (In re Florida Board of Bar Examiners), 4:04mc0032-WCS (N.D., Fla.).

This action represents both a general challenge to Florida licensing rules and an as-applied prospective challenge concerning Plaintiff's circumstances. Plaintiff has a real and immediate concern that the Defendants' disapproval of his First Amendment activities can and will be used to deny him future attorney licensure. The general challenge to the Florida rules is authorized by District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 485-486, 103 S. Ct. 1303; 75 L. Ed. 2d 206 (1983). Plaintiff's as-applied constitutional claims have been properly reserved for federal adjudication through an England reservation of federal claims and defenses. England v. La. State Bd. of Med. Examiners, 375

U.S. 411, 84 S.Ct. 461, 464, 11 L.Ed. 2d 440 (1964); Jennings v. Caddo, 531 F.2d 1331 (5th Cir. 1976).

The conduct complained of herein, involving retaliation for engaging in protected First Amendment activities and the absence of time limits on decision making and the lack of specific objective criteria which would limit the exercise of discretion by licensing officials, warrants federal relief because it violates Plaintiff's rights as guaranteed to him under the First and Fourteenth Amendments to the Constitution of the United States. Plaintiff's protected rights are enforceable under the Civil Rights Act of 1871, as amended 42 U.S.C. §1983.

JURISDICTION

1. Plaintiff seeks to vindicate his rights protected by the First and Fourteenth Amendments to the Constitution of the United States and by 42 U.S.C. §1983. This court has jurisdiction of this civil action pursuant to 28 U.S.C. §1331 and §1343(a)(3) and (4). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §2201 and §2202.

VENUE

2. Pursuant to 28 U.S.C. 1391(b), venue is proper in the United States District Court for the Northern District of Florida. The principal place of business for the Defendants is in the Northern District of Florida.

PARTIES

3. Plaintiff FRANK J. LAWRENCE, JR., is a resident of Bloomfield Township, Michigan. He is 31 years old and holds the degree of Juris Doctor from an American Bar Association accredited Michigan law school. Plaintiff has achieved a passing score on both the Michigan Bar Examination and the Florida Bar Examination, and his application for a license to practice law in Florida has been pending since November 19, 2001. Plaintiff is the founder of State Bar Watch, a registered Michigan non-profit corporation that advocates for the rights of attorney applicants, which results in criticism of attorney-licensing officials. Plaintiff also operates Florida Bar Watch, a registered web site at <http://www.floridabarwatch.org>, which reviews, and at times criticizes, the practices of the Florida Board of Bar Examiners (“FBBE”).

4. Defendant PAUL J. SCHWIEP is the current chairman of the FBBE, which is an administrative arm of the Florida Supreme Court, and, as such, he enforces Florida licensing rules and policies. Plaintiff seeks declaratory and injunctive relief against Defendant SCHWIEP. At all relevant times hereto, Defendant SCHWIEP was acting under color of state law. Defendant SCHWIEP is sued in his official capacity. Futernick v. Sumpter Twp., 78 F.3d 1051, 1055 n.5 (6th Cir. 1996) (“The directors of a state agency, no matter how far removed from the

actions of agency employees, are proper parties to a suit for an injunction under § 1983.”)

5. Defendant ELEANOR MITCHELL HUNTER is the current Executive Director of the FBBE and, as such, she enforces the Florida attorney licensing rules and policies. Plaintiff seeks declaratory and injunctive relief against Defendant HUNTER. At all relevant times relevant hereto, Defendant HUNTER was acting under color of state law. Defendant HUNTER is sued in her official capacity.

6. Defendant Hon. BARBARA J. PARIENTE is the Chief Justice of the Florida Supreme Court, and, as such, she enforces the Florida attorney licensing rules and policies. Plaintiff seeks declaratory and injunctive relief against the Florida Supreme Court through Defendant PARIENTE. At all times relevant hereto, Defendant PARIENTE was acting under color of state law. Defendant PARIENTE is sued in her official capacity. Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719, 736 (1980) (holding that the chief justice of the Virginia Supreme Court was not immune from a lawsuit seeking declaratory and injunctive relief prohibiting the chief justice from enforcing an allegedly unconstitutional rule regulating attorneys).

GENERAL ALLEGATIONS

A. Substances and Procedure for Character Review

7. Florida regulates the practice of law, as with other professions and occupations, by requiring a license as a condition of practice. Pursuant to Rule 2-10 of the Florida Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter “Rules”), an applicant for a law license must meet certain eligibility requirements. These requirements are divided generally between integrity fitness (evaluated by review of “good moral character”) and education fitness (evaluated by written examination of familiarity with standard legal concepts). The FBBE, through Defendants SCHWEIP and HUNTER are charged with the foremost responsibility of investigating and evaluating applications for admission to the practice of law in the State of Florida.

8. Florida law gives the FBBE authority to make recommendations concerning the assessment of “good moral character”. Specifically, the Rules set forth the procedures that shall be employed by the Defendants in assessing applicants’ moral character. These rules require, *inter alia*, that “an attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them.” Rule 3-10.

9. The FBBE, through its staff, undertakes a background review of an applicant's moral character. An applicant is required to submit a complete and sworn Bar Application as a part of his or her licensing request, which provides a summary of his or her adult events and activities. Rule 3-14. Because of this requirement, and given the unlimited nature of the FBBE's review, an applicant is required to disclose his or her First Amendment activities and other lawful activities for review.

10. Defendant PARIENTE and the Florida Supreme Court evaluate an applicant's character (under Rule 3-40.1), only when there has been an adverse finding by the FBBE and only upon request of an applicant aggrieved by the FBBE's review and findings. The FBBE's determination of the issues necessarily shapes the proceedings before Defendant PARIENTE, and the decision of Defendant PARIENTE is driven by the position of the FBBE. Thus, while the Florida Supreme Court has the final power to determine the character issue, when it is asked to directly review the matter, the resolution of an applicant's moral character and fitness is largely influenced by the FBBE.

11. The Florida licensing officials' assessment of an applicant's "good moral character" pursuant to Rule 3-10 and the standard of satisfaction are indefinite and lack precise guidelines. The FBBE is given unbridled discretion to evaluate an

applicant's character. Although the Rules set forth criteria that *may* be considered by licensing officials as disqualifying conduct (Rule 3-11), members of the FBBE are permitted to consider "any other conduct which reflects adversely upon the character or fitness of the applicant" (Rule 3-11(n)). This permits the FBBE to approve or disapprove of one's speech without consideration of First Amendment guidelines.

12. Some of the members of the FBBE are not attorneys. Therefore, the FBBE cannot make constitutional rulings or declare the Rules unconstitutional. The Rules do not require members of the FBBE to make constitutional rulings and the Rules do not explicate any limiting guidelines for the FBBE's scrutiny of lawful acts of applicants. Thus, Florida law authorizes unbridled decision-making regarding the evaluation of lawful acts, and the FBBE conducts itself on that basis.

13. In practice, Defendants SCHWIEP and HUNTER use "good moral character" review, to scrutinize the adult life history of each applicant, including the applicant's protected First Amendment activities and other lawful acts. As evidenced by the procedural history of Plaintiff's licensing attempt, the FBBE has denied and/or materially delayed certification for bar membership when it disapproved of protected expression and may do so again in the future, given its unbridled discretion over licensing.

B. FBBE's Involvement In The Character Recommendation to the Florida Supreme Court

14. The FBBE conducts an investigation and determines the character and fitness of every applicant or registrant for a law license in the State of Florida. In such investigation and inquiry, the Board may obtain such information as bears upon the character and fitness of the applicant or registrant. Rule 3-21. This determination of fitness by the FBBE is conducted without any consideration of procedural safeguards concerning the scrutiny of constitutionally protected conduct. This authorizes unbridled decision-making.

15. An applicant or registrant may be requested to appear for an investigative hearing for further inquiry of his or her good moral character. At an investigative hearing, the "technical rules of evidence need not be observed." Rule 3-22. Further, in many cases, the staff of the FBBE provides Board members with adverse information not supplied to the applicants, thereby placing applicants in a position of not being able to properly address or contest evidence being used to question their character. This review of fitness is conducted without any consideration of an applicants' constitutionally protected activities. This authorizes unbridled decision-making.

16. After an investigative hearing, the FBBE decides whether Specifications should be filed, charging the applicant or registrant with matters which if proven would preclude a favorable finding by the Board. Rule 3-22.5(d). Again, this review and determination of fitness is conducted without any procedural safeguards for the evaluation of applicants' constitutionally protected acts. The FBBE is free to approve or disapprove of one's speech for any reason and note that in a Specification.

17. Specifications are a formal charging document filed in those cases where the Board takes the position that "there is cause to believe" that an applicant is not qualified for admission to the Florida Bar. If the Board files Specifications, the Specifications are served upon an applicant or registrant. An applicant or registrant must respond to Specifications in the form of a sworn, notarized answer within 20 days from receipt of the Specifications. Rule 3-23

18. The Rules allow unbridled decision-making by both attorney and non-attorney members when deciding moral character issues. Any applicant or registrant who is a recipient of Specifications is entitled to a formal hearing before the FBBE. Rule 3-23.2. At this hearing, an applicant must disprove Specifications brought by the FBBE, which are prosecuted by the FBBE General Counsel. The FBBE then decides whether or not the FBBE's General Counsel has proven the FBBE's own

Specifications. This prosecution and review of fitness is conducted without any procedural safeguards concerning the evaluation of applicants' constitutionally protected acts.

19. A FBBE formal hearing panel consists of members of the Board other than those who participated in the investigative hearing. Rule 3-23.2. However, at a formal hearing, the transcript of the investigative hearing, including comments made by the investigative hearing panelists, is automatically introduced into evidence. As noted above, investigative hearing panelists may be provided adverse information that is not provided to the applicants. As such, formal hearings contain information in which the applicant is denied the right to confrontation and cross-examination of "those whose word deprives [him] of his livelihood."

Willner v. Committee on Character & Fitness, 373 U.S. 96, 103; 83 S. Ct. 1175; 10 L. Ed. 2d 224 (1963).

20. After the formal hearing, the FBBE makes one of four recommendations to the Florida Supreme Court, that: (1) the applicant has established his character and fitness; (2) the applicant should be conditionally admitted to the Florida Bar; (3) admission be withheld for a length of time; or (4) the applicant has not established his character and fitness. Rule 3.23.6. The procedures by which this

recommendation is reached avoid constitutionally mandated safeguards and can result in constitutional injury.

21. The FBBE is not comprised wholly of members with formal legal training. Indeed, some members are laypersons. Further, the FBBE is not required to make constitutional considerations or rulings. As a result, a failed applicant must wait to adjudicate his constitutional claims and defenses until after an adverse FBBE character recommendation.

ALLEGATIONS CONCERNING PLAINTIFF

22. On or about November 19, 2001, Plaintiff filed his application for a Florida law license with the FBBE and tendered all applicable filing fees. Through the information provided to the FBBE, Plaintiff produced evidence of his good moral character. He did this by showing that he had an adequate knowledge of the standards and ideals of the profession, and proof that Plaintiff is otherwise fit to take the oath and perform the obligations and responsibilities of a Florida attorney.

23. Plaintiff has a number of close relatives that permanently reside in the State of Florida and Plaintiff specifically sought a license to practice law in Florida so that he could work and live near his family. At all times relevant to this action,

Plaintiff has been, and remains, actively involved in seeking a license to practice law in Florida.

24. Prior to seeking licensure in Florida, Plaintiff had applied to the State Bar of Michigan for a Michigan law license, but he withdrew his application after Michigan licensing officials held his process in abeyance while he simultaneously litigated an ordinance charge. That ordinance charge was brought against Plaintiff by the president of the Michigan licensing body (State Bar of Michigan). See, Lawrence v. Van Aken, 2004 WL 228989 (W.D.Mich.), affirmed by Lawrence v. Van Aken, 316 F.Supp.2d 547 (W.D. Mich. 2004).

25. John T. Berry is the Executive Director of the State Bar of Michigan, the administrative body that investigates bar applicants and makes character recommendations in Michigan. Mr. Berry was formerly employed by the Florida Bar as its counsel. At all times relevant to this action, Mr. Berry has been actively involved in Florida licensing affairs and he presently serves with Defendant HUNTER on the Florida Supreme Court Commission on Professionalism.

26. On or about January 16, 2003, the FBBE held an investigative hearing concerning Plaintiff's application. During this hearing, Plaintiff discovered that the panelists had been provided documentation by the FBBE staff that had not been provided to Plaintiff. This information was discussed by the investigative hearing

panelists and considered by them during the hearing. Because Plaintiff had not been provided all information considered by the FBBE, he was unable to confront and contest records relied upon at the hearing.

27. After an investigative hearing, Rule 3-22.5 mandates that the “Board shall make one of the following determinations:

(a) that the applicant or registrant has established his or her qualifications as to character and fitness;

(b) that a Consent Agreement be entered into with the applicant in lieu of the filing of Specifications pertaining to drug, alcohol or psychological problems. In a Consent Agreement, the Board shall be authorized to recommend to the Court the admission of the applicant who has agreed to abide by specified terms and conditions upon admission to The Florida Bar;

(c) that further investigation into the applicant's or registrant's character and fitness is warranted;

(d) that Specifications be filed charging the applicant or registrant with matters which if proven would preclude a favorable finding by the Board.”

28. By letter dated January 24, 2003, Plaintiff was advised that the investigative hearing panelists had decided to file Specifications pursuant to Rule 3-22.5(d), which charge “the applicant or registrant with matters which if proven would preclude a favorable finding by the Board.”

29. Defendant HUNTER did not immediately comply with the directive in Rule 3-22.5(d). It was not until ten months later, November 25, 2003, that Specifications

were filed regarding the FBBE's January 24, 2003 directive to proceed under Rule 3-22.5(d).

30. On May 6, 2004, Plaintiff filed a miscellaneous action in this Court, which was assigned case number 4:04-mc-00032-WCS and assigned to Magistrate Judge William C. Sherrill, Jr. Specifically, Plaintiff sought a subpoena from this Court, directing Defendant HUNTER to disclose information relevant to Plaintiff's pending action against the Michigan licensing officials. On or about May 14, 2004, Magistrate Judge Sherrill authorized a subpoena for the requested records.

31. Defendant HUNTER refused to comply with the terms of the subpoena and the FBBE supported her refusal by hiring outside counsel in an effort to withhold the requested information. Specifically, Defendant HUNTER and the FBBE hired Tallahassee attorney, James Dean. On or about June 6, 2004, Mr. Dean filed in this Court his response, with objections, which indicated that Defendant HUNTER was unwilling to fully comply with the subpoena.

32. Defendant HUNTER and the FBBE had an interest in not providing the subpoenaed information to Plaintiff because Defendant HUNTER and the FBBE had already taken the position that Specifications should be filed regarding Plaintiff's litigation against the Michigan licensing officials. By refusing to

cooperate with the subpoena, Defendant HUNTER's and the FBBE's interests in pursuing successful Specifications against Plaintiff was furthered.

33. By letter to FBBE attorney James Dean dated June 3, 2004, Plaintiff indicated his intention to seek this Court's intervention again to compel compliance and request costs and sanctions for Defendants' vexatiously multiplying the proceedings. By letter dated June 10, 2004, FBBE attorney James Dean agreed to release the previously concealed information to the Plaintiff, as required by this Court's subpoena.

34. Whenever the FBBE files Specifications against an applicant, the Florida Procedures For Formal Hearings, Exchange of Witness and Exhibit Lists, §5, requires the FBBE to notify the applicant of any exculpatory information in the application's investigative file. On February 3, 2004, the FBBE General Counsel, Thomas A. Pobjecky, served a statement on the Plaintiff that stated "...you are hereby notified that a review of the file for the above-named applicant has been undertaken and no exculpatory information relating to the matters contained in the Specifications has been found."

35. However, once the FBBE complied with Magistrate Sherrill's subpoena, it was discovered that there was, in fact, exculpatory information about the Plaintiff that had been concealed. Specifically, FBBE General Counsel Thomas A. Pobjecky

failed to disclose a June 30, 2003 letter that had been in the FBBE's possession from a Michigan Judge that virtually endorsed Plaintiff's ability to practice law. This letter, addressed to the FBBE, stated in part *"Mr. Lawrence has appeared before me on three occasions for hearings relative to the pending motions. He also, in representing himself, filed pleadings and briefs. At all times appearing before me, Mr. Lawrence conducted himself in a professional and respectful manner. His legal writing was thorough and well constructed, given his lack of experience. I was at all times impressed with his ability to articulate, both orally and in written form, despite his emotional involvement in the case."* It is believed that the withholding of this information was intentional, and it was surely wrong.

36. The Florida Procedures For Formal Hearings states that the definition of exculpatory evidence is "any evidence which tends to negate the Applicant's culpability as to the specific allegations set forth in the Specifications." The June 30, 2003 letter from the Michigan judge described above was exculpatory and positively reflected on Plaintiff's ability to practice law. The FBBE wrongfully concealed this information from the Plaintiff and FBBE General Counsel Thomas Pobjecky's failure to disclose the letter violated the Florida Procedures For Formal Hearings.

37. Although Plaintiff has made a number of requests, the FBBE has refused to allow Plaintiff to review his investigative file and Plaintiff is unable to discover what, if any, other exculpatory information has been concealed by the Defendants. Additionally, since the Board's investigators collect such information to be presented by the Board's General Counsel to the Board itself, a risk for the deprivation of due process is created.

38. The FBBE staff's conduct in concealing information from Plaintiff, thereby inhibiting Plaintiff from defending the FBBE's Specifications, violated Plaintiff's right to due process of law and affronts the First and Fourteenth Amendments to the Constitution of the United States.

39. The FBBE filed Specifications against Plaintiff that generally encompassed six categories, namely (1) Plaintiff's criticisms of the Florida licensing system and its officials; (2) litigation Plaintiff brought against Michigan licensing officials; (3) a grievance that Plaintiff filed against a Michigan attorney; (4) an ordinance charge prosecuted by the president of the Michigan State Bar; (5) non-conviction police involvement; and (6) employment terminations in which Plaintiff had previously been found not guilty of misconduct in prior administrative unemployment proceedings.

40. The FBBE filed Specifications against Plaintiff that concerned constitutionally protected lawful acts. Plaintiff's criticism of the Florida attorney licensing system and its officials was used by the FBBE to shape and influence the formal hearing panel's substantive and procedural posture. The FBBE's Specifications presented at Plaintiff's formal character hearing charged, in part, Plaintiff with being unfit to practice law for making the following statements:

- a) "My second request surrounds my substantial concern that the Board's unbridled discretion over character assessment, in its present state, patently violates federal law."
- b) "My research of Florida's attorney licensing system indicates that it scrutinizes First Amendment activities without adequate procedural safeguards, as required by federal law."
- c) "The Board's character analysis is simply being used as a 'gatekeeping' analysis to determine whether the Board members like or dislike an applicant."
- d) "The Florida Board also denies applicants hearings wherein full judicial procedural safeguards are in place (trial like safeguards where the full Rules of Evidence apply)."
- e) "There is no possibly [sic] way I can get a fair hearing before the Florida Board of Bar Examiners."

41. Plaintiff's criticisms of the FBBE and the Florida licensing system are openly and honestly held views. However, the FBBE's Specifications indicated that Plaintiff's statements should preclude issuance of a license because, in the FBBE's opinion, Plaintiff's statements displayed "an inadequate knowledge and/or lack of appreciation of the admissions standards and the principles and ideals of the legal profession..." The FBBE's decision to charge Plaintiff with being unfit to practice law due to his openly lawful and honestly held criticisms of the Florida system had

a chilling effect on Plaintiff's exercise of First Amendment rights, causing him to suffer an additional injury-in-fact, over and above that suffered by his inability to earn a living in his chosen profession. This threat and active prosecution is not speculative or hypothetical. Doe v. Pryor, 344 F.3d 1282, 1287 (11th Cir. 2003).

42. Plaintiff requested that Defendant HUNTER be required to testify at his formal hearing, but Plaintiff's request was denied. Therefore, Plaintiff was unable to make a record of Defendant HUNTER's knowledge of any other exculpatory information in the FBBE file or take testimony about Defendant HUNTER's communications, if any, with Michigan Executive Director John T. Berry.

43. Plaintiff's formal hearing before the FBBE was held on November 19, 2004. Plaintiff began the hearing by reading into the record an England reservation of federal claims and defenses that he had previously served on the Board. Plaintiff advised the FBBE that he intended to reserve his federal constitutional claims and defenses for adjudication in a federal forum.

44. An applicant or registrant may request withdrawal of a bar application without prejudice. Rule 3-15. In such cases "the Board shall consider acceptance of the request but may continue its investigative and adjudicative functions to conclusion." Id. In addition to placing a specific England reservation on the record before Plaintiff's formal hearing began, Plaintiff requested that the Board

allow him to withdraw his application for admission. Plaintiff's request was denied and the formal hearing went forward. Plaintiff then proceeded at the hearing involuntarily and without counsel. Plaintiff would have obtained counsel and rescheduled the hearing had he been permitted.

45. Procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood. The need for confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as bar admission proceedings. Willner, 373 U.S. at 103. At Plaintiff's investigative hearing, the Board elected to introduce statements from individuals whose words were used to deprive Plaintiff of his ability to practice law. Because the FBBE only introduced paper documents, Plaintiff was unable to confront or examine the sources of this information.

46. Florida Procedures For Formal Hearings, Request for the Issuance of Subpoenas, §1, provides that "The Board will cause subpoenas to be issued for such witnesses or the production of such documents located within the State of Florida as the Applicant or the Office of General Counsel in good faith and for good cause requests." The Board elected to consider documentation that it knew was generated from individuals immune from a subpoena because this information was not "located within the State of Florida." Therefore, Plaintiff was denied his

right to confrontation and cross-examination of those whose word was used to deprive him of his livelihood.

47. Plaintiff's openly and honestly held views concerning the FBBE and the Florida licensing system were focused upon by the formal hearing panel. Plaintiff was questioned about other protected First Amendment activities, such as his involvement in State Bar Watch and his belief that there is widespread dishonesty and bias in the Michigan judiciary concerning the interests of the poor, youth, minorities and persons accused of crimes. The FBBE's focused on Plaintiff's constitutionally protected and lawful acts and used those lawful acts and without consideration of any constitutional safeguards concerning scrutiny of them.

48. The FBBE's opinion and recommendation concerning the Specifications presented by the FBBE will necessarily shape any future proceedings before the Florida Supreme Court. The issues reviewed by the Florida Supreme Court and Defendant PARIENTE are influenced by the position of the FBBE. Thus, while the Florida Supreme Court and Defendant PARIENTE have the final power to determine an applicant's character, the resolution of an applicant's moral character and fitness will be largely influenced by the FBBE's findings.

49. Florida law license applicants with an open application on file for more than 3 years are required to begin the licensing process over again. Rule, 2-29. Defendant

HUNTER intentionally and unconstitutionally delayed the formal hearing on Plaintiff's November 19, 2001 application until November 19, 2004, exactly three years from the date of Plaintiff's application. The FBBE's delay in processing Plaintiff's application caused constitutional injury to Plaintiff and it was committed in bad faith and in retaliation for Plaintiff's openly and honestly asserted criticisms of Defendant HUNTER, the Michigan licensing officials, and the FBBE. The absence of time limits on the Florida licensing process produces further injuries-in-fact.

50. Plaintiff's truthfulness and candor have not been called into question by the FBBE.

51. Following a formal hearing in cases involving an adverse recommendation from the FBBE, Rule 3-27.3 requires the FBBE to "expeditiously issue its written Findings of Fact and Conclusions of Law." As of this date, the FBBE has not issued its written findings of fact and conclusions of law regarding the Plaintiff's application for admission.

52. On January 21, 2005, Plaintiff spoke with FBBE Assistant General Counsel Bruce Long, who advised the Plaintiff that it is the FBBE's policy for the prosecutor of the Board's Specifications to draft the Board's findings of fact and

conclusions of law following a formal hearing. On the same date, Plaintiff sent a letter to FBBE General Counsel Thomas Pobjecky that stated, *inter alia*:

This letter is to confirm my conversation today with your subordinate, Bruce Long, in which I was advised that when you prosecute Specifications against an applicant before a Board panel, you also draft the Board's opinion. If this is not the case, please advise me at once, as I intend to address this matter in our federal litigation.

53. On or about February 9, 2005, the FBBE's outside counsel, James Dean, responded to Plaintiff's January 21, 2005, communication by stating, *inter alia*:

As your client readily ascertained in his phone call to the Board's office, once a formal hearing panel has reached its decision, the Board's staff (including a staff attorney) prepares proposed findings, conclusions and recommendation.

CONSTITUTIONAL CLAIMS

54. Applicants for a law license in Florida possess a federally secured liberty and/or property interest that requires due process of law at each stage of the Florida attorney licensing system. According to Rule 1-16, "the Board shall recommend the admission of every applicant who has complied with all the requirements of the applicable rules, who has attained passing scores on the examination, and who has demonstrated the requisite character and fitness of an applicant for admission."

The "shall" language used in Rule 1-16, as well as the substantive predicates used throughout the Rules, creates a property and liberty interest in favor of an applicant

that is protected by the Constitution of the United States. Olim v. Wakinekona, 461 U.S. 238, 256-257; 103 S. Ct. 1741; 75 L. Ed. 2d 813 (1983).

55. A claim of present right to admission to the bar of a state and a denial of that right is a justiciable controversy. Willner, 373 U.S. at 102. Plaintiff claims a present right to admission to the Florida Bar, given his passing Florida Bar Examination score and his submitted proofs as to his good moral character.

56. The right to be admitted to the practice of law is not a matter of grace and favor. Id. A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the First Amendment, Due Process or Equal Protection clauses of the Fourteenth Amendment. The FBBE's practice of deeming an applicant's constitutionally protected acts that it objects to as a basis for character rejection contravenes the due process and equal protection clauses of the Fourteenth Amendment and it is not rationally related to any legitimate interest of the State of Florida. Such a practice also has a chilling effect on the applicant and the exercise of rights guaranteed to him by the Constitution. Perry v. Sindermann, 408 U.S. 593, 597, 33 L. Ed. 2d 570, 92 S. Ct. 2694 (1972).

57. The FBBE requires licensing applicants to disclose protected First Amendment activities when applying for a license to practice law in Florida. A

failure or refusal to disclose this requested information in connection with the licensing process will result in an adverse recommendation by the FBBE. The FBBE use of unbridled discretion in evaluating an applicant's protected First Amendment activities has a chilling effect upon the exercise of the applicants' First Amendment rights and violates the First and Fourteenth Amendments to the Constitution of the United States.

58. The FBBE denies licensing applicants the ability to confront and cross-examine those whose words are used to deny applicants their livelihood by considering evidence from individuals immune from a subpoena. The use of evidence in this manner violates the Supreme Court's pronouncements in Willner, supra, and violates the Fourteenth Amendment to the Constitution of the United States.

59. As stated in paragraph 39, the FBBE used Plaintiff's non-conviction police involvement as basis for Specifications. The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever probative force the arrest may have had is normally dissipated. Schwartz v. Board of Bar

Examiners, 353 U.S. 232, 241; 77 S. Ct. 752; 1 L. Ed. 2d 796 (1957). The Defendants' practice of using non-conviction arrest records as a basis for licensure denial violates the Fourteenth Amendment to the Constitution of the United States.

60. The FBBE requires licensing applicants to disclose protected First Amendment activities on their applications, including any and all litigation involvement (including administrative proceedings). Yet, the Petition Clause of the United States Constitution protects against retaliation due to the filing of a grievance against the government. Hoerber on Behalf of NLRB v. Local 30, 939 F.2d 118, 126 (3rd Cir. 1991) ("The filing of a lawsuit carries significant constitutional protections, implicating the First Amendment right to petition the government for redress of grievances, and the right of access to courts."). The FBBE scrutinizes litigation in which applicants have been involved, including litigation where an applicant prevailed or where an applicant was found not to have engaged in any misconduct. The FBBE's degree of scrutiny of lawful activities would chill a person of ordinary firmness from petitioning the government for redress of grievances.

61. Florida has a broad policy of claim and issue preclusion. When investigating prior litigation in which an applicant has been involved, the FBBE reevaluates conduct and issues that have been decided in prior legal actions or could have been

raised in the prior actions. The FBBE has no statutory or constitutional authority bestowed upon it to reevaluate and relitigate issues otherwise barred by res judicata and/or collateral estoppel in Florida courts of law. Requiring an applicant to relitigate these issues or even to explain his involvement violates due process of law and the First and Fourteenth Amendments to the Constitution of the United States.

62. The FBBE requires licensing applicants to disclose his or her employment history, including instances where an applicant has been terminated by an employer but was found not to have engaged in misconduct. Requiring an applicant to relitigate issues already determined in his favor by prior final administrative proceedings violates due process of law and the First and Fourteenth Amendments to the Constitution of the United States.

63. An applicant for licensing in the State of Florida should not be denied a license because he or she has exercised First Amendment rights or challenged unlawful or questionable governmental conduct, solely because members of the licensing board decide they do not approve of what was said or done. Such an evaluation requires constitutionally mandated procedural safeguards.

64. The Defendants operate with unbridled discretion and the FBBE licensing process patently violates the First Amendment. Every person considering applying

for a law license in Florida must be careful in his or her lawful actions and statements. This creates a chilling effect on other would-be applicants, who are not directly before the Court. Further it is impossible for an applicant to ascertain what lawful speech would be unacceptable to the FBBE.

65. The practice of law is a First Amendment business. The practice of law consists of the daily expression of ideas, often including speech, for the redress of common law claims, statutory rights, equitable interests and/or constitutional rights, and for the development of new legal theories. These kind of expressive activities inherently involve important public issues and are, thus, regarded as primary values that are protected by the First Amendment. An approval process of First Amendment activity must have adequate procedural safeguards regardless whether the process is nominally content-neutral. Thomas v Chicago Park District, 534 U.S. 316; 122 S. Ct. 775; 151 L. Ed. 2d 783 (2002). These safeguards consist of narrow, objective and definite guidelines, and time limits on decision-making.

66. The FBBE investigates applicant-suitability without concern as to whether an applicant's First Amendment activities are protected by law. In addition, the Defendants make "character" decisions based on the content of an applicant's speech and they use "character" evaluation as a censorship tool. The FBBE's decision-making process violates the unconstitutional condition doctrine because

the scrutiny of an applicant's character is linked to the licensing authority's subjective approval of the content or appropriateness of an applicant's protected expression. The Defendants' practices violate the First Amendment.

67. The FBBE shapes the substantive and procedural issues that are reviewed by the Florida Supreme Court and Defendant PARIENTE. Because the FBBE is left without the ability to make constitutional rulings, and the admission Rules allow the FBBE to use applicants' protected and lawful acts in the assessment of character, without required constitutional restraints, the Defendants are permitted by Florida law to violate the First and Fourteenth Amendments to the Constitution.

68. The Florida licensing process lacks uniform and objective decision-making guidelines, which are required by due process or equal protection of law standards under the Fourteenth Amendment. Such an imprecise regulatory scheme is facially invalid under the void-for-vagueness doctrine and overbreadth doctrines. Gentile v. State Bar of Nev., 501 U.S. 1030; 111 S. Ct. 2720; 115 L. Ed. 2d 888 (1991). The absence of precise standards permits, and indeed invites, arbitrary decision-making, fails to afford notice of disqualifying conduct, and chills the exercise of constitutional rights. The failure to have objective guidelines produces differential outcomes arising from an inherently subjective assessment of character, and can easily result in constitutional injury as it has here.

69. Injury to First Amendment rights constitutes irreparable loss. The Florida attorney licensing process, in both its procedural and substantive aspects, has produced irreparable harm to the First Amendment rights of Plaintiff, and will to others, because of the chilling effect of the regulations, for which there is no adequate remedy at law.

70. A person's opportunity to pursue a career is a fundamental liberty interest, which is protected by the Due Process and Equal Protection clauses of the Fourteenth Amendment. A person's right to pursue a chosen occupation under state licensing requires standardized rules of procedure and substance so that there is uniformity in their application by the authorized decision-maker. State regulation of fundamental activities must comport with constitutional mandates, among others, for equal protection of law.

71. The evaluation of good moral character by the FBBE lacks the uniformity and precision required by due process and equal protection of law. The process lacks uniform and objective decision-making guidelines. The failure to have objective guidelines produces differential outcomes arising from inherently subjective assessment(s) of character. The Florida Supreme Court has noted the absence of such objective criteria. Florida Board of Bar Examiners Re: L.M.S., 647 So.2d 838, 839 (Fla. 1994) ("While there is no litmus test by which to determine whether

an applicant for admission to the Bar possesses good moral character, we have said that no moral character qualification for Bar membership is more important than truthfulness and candor.”) The Florida licensing officials do not question Plaintiff’s honesty and candor. The Florida attorney licensing process, as it exists at this time, violates the First and Fourteenth Amendments.

72. The FBBE’s policy of permitting the FBBE staff, which include those who investigate applicants and/or prosecute Specifications against applicants, to even be involved in drafting the FBBE’s findings of fact and conclusions of law, violates due process of law and affronts the Fourteenth Amendment to the Constitution of the United States. The Florida Bar v Mason, 334 So2d 1 (Fla., 1976).

73. The actions and conduct of the Defendants violated the First and Fourteenth Amendment rights of Plaintiff in that they constitute deprivations of liberty and property without due process of law and denial of equal protection of the laws.

74. Plaintiff has sustained irreparable constitutional injury and his First Amendment rights have been chilled as a result of Defendants’ improper scrutiny and evaluation of First Amendment activities, in the absence of constitutional concern or guidelines.

CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Plaintiff prays that this Court grant the following relief:

General Relief Sought

(A) That the Court grant declaratory and injunctive relief, which prohibits the Defendants' use of constitutionally protected activities or other lawful conduct as a basis for the assessment of the moral character and fitness of applicants and as a basis for denying character certification to attorney applicants, unless the FBBE follows established constitutional requirements and guidelines;

(B) That the Court issue a declaratory judgment that the FBBE's use of unbridled discretion described herein, including the absence of adequate and necessary safeguards to protect federally secured freedoms, cause the deprivation of rights guaranteed to the Plaintiff by the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. §1983;

(C) That the Court enjoin Defendants to initiate, adopt, and otherwise implement procedures and practices to ensure that protected and lawful acts of applicants for licenses to practice law in Florida are not used as a basis for licensure denial;

(D) That the Court issue a declaratory judgment that the Defendants' practice of following a FBBE policy of concealing adverse factual information

considered by the Board during character reviews but not provided to the applicants is unlawful, and enjoin any future enforcement of said policy;

(E) That the Court issue a declaratory judgment that it is unlawful to follow a FBBE policy of concealing exculpatory information contained within the Defendants' files, and also declare that applicants are entitled to a full review of the investigative information contained in the FBBE files;

(F) That the Court issue a declaratory judgment that it is unlawful for the Defendants to follow the FBBE policy of denying applicants the right to confront and cross-examine those whose words are used to deny the applicants a license, and further enjoin Defendants from making character recommendations based upon information from sources or individuals immune from a subpoena;

(G) That the Court issue a declaratory judgment that it is unlawful for the Defendants to use non-conviction arrest records as a basis for licensure denial and enjoin any future enforcement of said policy;

(H) That the Court issue a declaratory judgment that it is unlawful for Defendant HUNTER, the FBBE General Counsel, and/or their respective staff, to draft the FBBE's findings of fact and conclusions of law, and enjoin any future enforcement of said policy;

Relief Specific To Plaintiff's Application for Admission

(I) That the Court declare that Plaintiff's First and Fourteenth Amendment rights have been violated by Defendants' licensing procedures regarding Plaintiff's application;

(J) That the Court require Defendants HUNTER and SCHWIEP to immediately accept and process Plaintiff's reapplication, with consideration of mandated constitutional safeguards and time constraints;

(K) That the Court order Defendants HUNTER and SCHWIEP to accept Plaintiff's reapplication to practice law without any additional costs or penalties, and that Defendants be enjoined from using Plaintiff's protected and lawful acts as a basis for further Specifications;

(L) That the Court order Defendants HUNTER and SCHWIEP to process Plaintiff's reapplication for admission within 3 months or less from the date of its filing and to waive the requirement of Rule 2-29 that would find Plaintiff's application to be stale;

(M) That the Court enjoin Defendant PARIENTE from denying Plaintiff a license to practice law without consideration of constitutional procedural safeguards concerning Plaintiff's constitutionally protected activities;

(N) Award Plaintiff reasonable costs and attorneys' fees;

(O) Such other relief as is just and appropriate.

Dated: February 14, 2005

Respectfully submitted:

s/ Dennis B. Dubuc

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VERIFICATION OF COMPLAINT

I verify under penalty of perjury that the foregoing is true and correct.

Executed on: February 14, 2005

s/Frank J. Lawrence, Jr/

Frank J. Lawrence, Jr.