IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MICHAEL J. HASON,

Plaintiff,

vs. Case No.: 4:06cv105-RH/WCS

FLORIDA BOARD OF
BAR EXAMINERS, et al.

Defendants.
_______________________/

DEFENDANTS' MEMORANDUM OF LAW
IN OPPOSITION TO
PHILIP J. STODDARD'S MOTION TO INTERVENE

Defendants Eleanor Hunter, Executive Director of the Florida Board of Bar Examiners ("Hunter"), and the Florida Board of Bar Examiners ("the Board"),[1] respond to the Motion to Intervene filed by Philip J. Stoddard ("Stoddard"), and state that Mr. Stoddard's Motion to Intervene should be denied.[2]

I. Factual Background

A. Plaintiff Michael Hason

Plaintiff Michael Hason filed the instant civil action in the United States District Court for the Southern District of Florida about ten months ago in August of 2005. Plaintiff Hason's complaint arose out of his then-pending application for admission to The Florida Bar.

[1] Only Defendant Hunter and the Board are defendants to the action filed by Plaintiff Michael Hason. No other party has been served with process.
[2] Movant did not file a memorandum in conjunction with his motion as required by N.D. Fla. Loc. R. 7.1(a), nor did he confer with Defendants and file a certificate as required by N.D. Fla. Loc. R. 7.1(b).

Service of process was effected on Defendant Hunter and the Board. Defendants Hunter and the Board moved in the Southern District to dismiss the action based on several grounds, including improper venue. United States District Judge Donald Middlebrooks ordered that venue of the action be transferred to the District Court for the Northern District of Florida. (doc. 27). The Defendants renewed their motion to dismiss in the Northern District.

In his complaint, Plaintiff Hason alleges that he applied for admission to The Florida Bar "in about August of 2001." (complaint, doc. 1, ¶5). Plaintiff requests that the Court issue injunctive relief and that the Court also "adjudge that the Defendants jointly and severally are liable to Dr. Hason in the amount of $10,000,000 and an additional $10,000,000 in punitive damages." (*Id.*, ¶6).

Plaintiff Hason challenges the specific manner in which the Board and Defendant Hunter conducted *Plaintiff Hason's* character and fitness review during the Board's proceeding on his application for admission. In Count I, Plaintiff Hason appears to assert a claim against the Board for discrimination under the Americans with Disabilities Act, 42 U.S.C. §12131 et seq. ("ADA").[3] Plaintiff Hason asserts that he "has a history of recurrent depression," and he alleges that the Board violated the ADA by inquiring about his mental health and requesting his treatment records for a ten-year period. (doc. 1, ¶3-5). In Counts II and III, Plaintiff Hason appears to assert claims for ADA retaliation against the Board, alleging that the Board retaliated against him because he filed suit against the Florida Board of Medicine and Medical Board of California. (doc. 1, ¶¶ 10-13). Count IV purports to assert a claim against the Board under 42 U.S.C. §1983

[3] Plaintiff states in his "affidavit" that "[a]ll ADA and retaliation claims" are being asserted only against the Board. (doc. 19, p. 5, ¶8).

relating to the substance of the particular Specifications that the Board filed against Plaintiff Hason in his Bar admission proceeding. Finally, Count V purports to assert a Section 1983 claim against Defendant Hunter based on her alleged approval, support or coordination of the Board's actions alleged in the preceding counts. (doc. 1, ¶16).

After Defendants moved to dismiss Plaintiff Hason's complaint in the Southern District based, in part, on the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), Plaintiff notified the District Court that he was abandoning his application for admission. Plaintiff apparently "abandoned" his application in a misguided attempt to avoid the effect of the *Younger* abstention doctrine. (doc. 19, p. 8, ¶5) ("With respect to *Younger* abstention, de facto, Dr. Hason's application to the FBBE is abandoned per his affidavit."). The Defendants' Motion to Dismiss remains pending and is ripe for a decision.

B. Proposed Intervener Philip Stoddard

The proposed intervenor, Philip Stoddard, has already filed a prior civil action in federal district court relating to his application for admission to The Florida Bar. Thus, the instant Complaint in Intervention would be Mr. Stoddard's *second* civil action relating to his Florida Bar admission proceeding.

1. <u>Stoddard's 2002 Complaint</u>

Mr. Stoddard initially applied for admission to The Florida Bar in November of 1999. (doc. 39, Intervention Complaint, ¶13). In March of 2002, Mr. Stoddard filed a civil action relating to his then-pending application for admission to The Florida Bar ("2002 complaint"). The facts and circumstances relating to Mr. Stoddard's 2002 complaint are set forth in the Opinions of the District Court and the Eleventh Circuit

Court of Appeals in that case. (Copies of Orders of District Court and Eleventh Circuit Court of Appeals attached as Exhibits A and B respectively). In the 2002 case, Mr. Stoddard had claimed that the specific manner in which the Board had conducted *Mr. Stoddard's* character and fitness review during the Board's proceeding on his application for admission violated his rights under (1) Title II of the Americans with Disabilities Act, 42 U.S.C. §12131 et seq.; (2) 42 U.S.C. § 1983, based on alleged violations of free speech, privacy, due process and equal protection; and (3) the Bankruptcy Act, 11 U.S.C. § 525.

Among other things, Mr. Stoddard had alleged that Specifications which the Board had filed against him related to matters that "[n]o reasonable Bar admissions authority would view ... as 'disqualifying or even remotely related to the Plaintiff's fitness for practice.'" (Exhibit B, Decision of Eleventh Circuit, at pp. 4 - 5). The Board's Specifications against Mr. Stoddard were: (1) failing to pay child support between 1979 and 1988; (2) failing to file timely tax returns from 1980 to 1987; (3) a 1998 dispute with a traffic enforcement officer resulting in a "withheld adjudication" on a "resisting charge"; (4) committing unlicensed practice of law in a 1997 federal lawsuit in which he claimed his and his mother-in-law's rights were violated by several persons; (5) refusing to admit that his actions in connection with that lawsuit amounted to the unlicensed practice of law; (6) suing a former employer in connection with a non-competition agreement; (7) writing a "strong" letter disputing his obligation to pay for a transcript of the investigative hearing; (8) failing to renew his auto insurance in 1994 resulting in a judgment against him in connection with a motor vehicle accident; and (9) obtaining a bankruptcy discharge in 1996 (which included discharge of the motor vehicle

accident judgment and back taxes and penalties). (See Exhibit B, Decision of Eleventh Circuit, at p. 4).

In March of 2003, United States District Judge Mickle dismissed Mr. Stoddard's 2002 complaint for lack of subject matter jurisdiction and on the merits, based on several alternative grounds. (Exhibit A). In October of 2003, the Eleventh Circuit Court of Appeals affirmed the dismissal of Mr. Stoddard's federal action. (Exhibit B). Because Mr. Stoddard's Amended Complaint in he 2002 action alleged that he had no application pending and he had abandoned any claim for money damages, the Eleventh Circuit concluded that Mr. Stoddard lacked standing and his claims were not ripe. (Exhibit B, Order, at pp. 12-13). Thus, the Eleventh Circuit concluded that "the district court correctly dismissed this matter for lack of jurisdiction." (*Id.* at p. 13).

2. Stoddard's 2006 Complaint in Intervention

Mr. Stoddard now seeks permission of the Court to file a second Complaint ("2006 Complaint"), as an Intervenor in the instant action, under Federal Rule of Civil Procedure 24. (doc. 38).

Mr. Stoddard's proposed 2006 Complaint asserts that the Board violated his (i) First Amendment right to freedom of speech, (ii) his rights under the ADA and (iii) his rights under Article I, Section 10 of the U.S. Constitution proscribing the imposition of punishment by a "Bill of Pains and Penalties." (doc. 39, ¶¶ 32, 43, 52, 54, 58).

Mr. Stoddard again names the Board's Executive Director, Eleanor Hunter, as a defendant. (doc. 39). However, Mr. Stoddard also seeks to add another defendant: Thomas A. Pobjecky, Esq. Mr. Pobjecky is the General Counsel for the Florida Board of Bar Examiners. (doc. 39, ¶6). Mr. Stoddard seeks to sue Ms. Hunter and Mr. Pobjecky

in both their official *and their personal capacities*. Mr. Stoddard requests an award of damages against Ms. Hunter and Mr. Pobjecky, jointly and severally, "in an amount not less than Ten Million Dollars ($10,000,000.00)." (doc. 39, p. 19). Mr. Stoddard also seeks unspecified injunctive relief.

Whereas Plaintiff Hason avers that he no longer has a pending application for admission, Mr. Stoddard alleges that he is a "present applicant" for admission to The Florida Bar. (doc. 39, ¶4). Mr. Stoddard's proposed 2006 Complaint alleges that the Board took *specific actions* with respect to Mr. Stoddard that violated his statutory and constitutional rights. Mr. Stoddard *alleges* that during the course of his Bar admission proceeding, the Board has "violated their own rules" (doc. 39, ¶29) and retaliated against Mr. Stoddard because of "his protected exercise of First Amendment rights." (doc. 39, ¶30).[4]

Among other things, Mr. Stoddard *alleges* in the proposed 2006 Complaint: (i) that in April 2002, the Board "dismissed the Intervenor's application without prejudice ... in plain violation of" Rule 3-23.4, Fla. Bar Admiss. Rules (doc. 39, ¶ 17); (ii) that after Mr. Stoddard submitted a renewed application for admission in July 2004, he moved to dismiss the pending Specifications but the Board failed to rule on his motion for dismissal (doc. 39, ¶20); (iii) that the Board solicited information from attorneys in the vicinity of Mr. Stoddard's residence for information that might reflect adversely on Mr. Stoddard's character and fitness even though these persons included former adversaries and future business competitors (doc. 39, ¶¶33, 35); (iv) that the Board thereafter

[4] The retaliation claim allegedly relates to: Mr. Stoddard's having filed a grievance against a St. Augustine police officer (doc. 39, ¶36); Mr. Stoddard's public advocacy of action adverse to the financial interests of several St. Johns County attorneys and a Circuit Judge (*id.* at ¶37); and Mr. Stoddard's filing of certain litigation adverse to certain St. Johns County attorneys. (*Id.* at ¶37-38).

conducted another informal, investigative, hearing relating to Mr. Stoddard's character and fitness for admission (doc. 39, ¶ 21); (v) that at the informal hearing, the informal hearing panel and Mr. Pobjecky asked questions relating to Mr. Stoddard's mental health "without the presence of a qualified professional" (doc. 39, ¶22);[5] (vi) that the Board served Supplemental Specifications in July 2005 "involving the Intervenor's lawful exercise of free speech rights" (doc. 39, ¶24); and (vii) that although Mr. Stoddard alleges that he satisfies the Board's character and fitness requirements, the defendants have targeted him for exclusion from admission because (a) he has been diagnosed with and treated for bi-polar disorder and (b) "he is unpopular with certain incumbent bar members in his home county on account of litigation and political activities." (doc. 39, ¶¶26-28).

II. Mr. Stoddard is Not Entitled to Intervention "of Right"

In order to be entitled to intervention of right under Federal Rule of Civil Procedure 24(a)(2), a person must demonstrate that: "(1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit." *Worlds v. Dept. of Health and Rehabilitative Servs.*, 929 F.2d 591, 593 (11th Cir.1991) (*citing Chiles v. Thornburgh*, 865 F.2d 1197 (11th Cir.1989)).

A. Mr. Stoddard's Application for Intervention is Untimely

[5] Mr. Stoddard makes the factual allegation (without any factual support) that Mr. Pobjecky has a "personal vendetta" against Mr. Stoddard. (doc. 39, ¶53).

Timeliness is a determination that is left to the sound discretion of the trial court and is be determined from all the circumstances. *See NAACP v. New York*, 413 U.S. 345, 366 (1973). These circumstances include: (1) the "length of time during which the would-be Intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene"; (2) the "extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be Intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest" in the case; (4) the "extent of the prejudice that the would-be Intervenor may suffer if his petition for leave to intervene is denied"; and (4) the "existence of unusual circumstances militating either for or against a determination that the application is timely." *Meek v. Metropolitan Dade County, Fla*., 985 F.2d 1471, 1479-1480 (11th Cir. 1993) (*quoting Stallworth v. Monsanto Co*., 558 F.2d 257, 263-66 (5th Cir.1977)).[6]

In the instant case, Mr. Stoddard contends that the application for intervention is timely because:

> Granting the motion will not prejudice the parties because the Plaintiff will have the benefit of the Intervenor's considerable research library on the important issues in the case and because the Defendants, by a long history of defending against suits by aggrieved bar applications, have obviously acquired a similar library…The motion is timely because Intervenor discovered the pendency of the suit on or about May 25, 2006 while searching the Court's database for pending litigation concerning the Florida Board of Bar Examiners...Upon discovering the pendency of this suit the movant immediately reviewed Defendant's pending "Motion to Dismiss" and realized that his future claim against the Defendants would necessarily be prejudiced should the Court decide the motion to dismiss in Defendants' favor and the Plaintiff fails to appeal or loses on appeal.

(doc. 38, ¶¶6-8).

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[6] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981)(en banc), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

Defendants submit that Mr. Stoddard's application for intervention is not timely. Mr. Stoddard acknowledges that "Intervenor has, for some time considered filing a suit for damages and for injunctive relief against these Defendants and has forborn from doing so because his application for bar admission remains pending before the Defendants." (doc. 38, ¶7).

Defendants have moved to dismiss Plaintiff Hason's complaint on several grounds (doc. 30), and Plaintiff Hason has responded to the Defendants' pending Motion to Dismiss (doc. 42). Defendant Hunter has moved to dismiss this action based on judicial immunity (doc. 30, p.2). The purpose of the official-immunity defenses is to "liberate government [officials] from the need to constantly err on the side of caution by protecting them both from liability '*and the other burdens of litigation, including discovery*.'" *Holmes v. Kucynda*, 321 F.3d 1069, 1077 (11th Cir. 2003) (citation omitted). These defenses thus serve "to bar a plaintiff [from] haul[ing] government officials into court and subject[ing] them to extensive discovery and summary judgment proceedings." *Pace v. Capobianco*, 283 F.3d 1275, 1285 (11th Cir. 2002), *citing Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). The United States Supreme Court has thus emphasized that judicial immunity, like other forms of official immunity, "is an immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991), *citing Mitchell v. Forsyth,* 472 U.S. 511 (1985). Allowing Mr. Stoddard to intervene in this matter will necessarily delay the Court's disposition of Ms. Hunter's assertion of judicial immunity and thereby frustrate the purpose of the immunity defense.

Mr. Stoddard has also failed to show the "extent of the prejudice that the would-be Intervenor may suffer if his petition for leave to intervene is denied." To the extent

Mr. Stoddard is concerned about how the Court will rule on the Eleventh Amendment and other defenses in this case, these issues have already been ruled on in prior cases in this District, including by Judge Mickle in Mr. Stoddard's 2002 action. (See Exhibit A).

Finally, there are also "unusual circumstances militating ... against a determination that the application is timely." Mr. Stoddard has already filed one action relating to his application for admission, and that case was litigated at both the District Court and on appeal to the Eleventh Circuit. Mr. Stoddard should not be allowed to use the vehicle of intervention to piggyback a second lawsuit onto Plaintiff Hason's pending case.

Moreover, Mr. Stoddard clearly alleges that he is a "present applicant" for admission, whose application for admission "remains pending." (doc. 38, ¶7). Mr. Stoddard's action is thus clearly barred by, among other things, the *Younger* abstention doctrine. *See Younger v. Harris*, 401 U.S. 37 (1971); *Middlesex County Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423 (1982). Mr. Stoddard should not be allowed to circumvent the *Younger* abstention doctrine and established legal principles through this motion for intervention. As one court has stated, "A motion to intervene, however, is not a tactic to cure jurisdictional defects: '…(it is) not to be permitted to breathe life into a nonexistent law suit…'" *Gebhard v. G.A.F.*, 59 F.R.D. 504, 508 (D.D.C. 1973)(*citing Fuller v. Volk*, 351 F,2d 323, 328 (3rd Cir. 1965)).

B. Mr. Stoddard Lacks an Interest Relating to the Transaction which is the Subject of the Pending Action

In *Chiles v. Thornburgh*, 865 F.2d 1197 (11th Cir. 1989), the court held that intervention "must be supported by a 'direct, substantial, legally protectible interest in the proceeding.'" *Chiles*, 865 F.2d at 1213 (*citing Athens Lumber Co., Inc. v. Federal*

Election Com'n, 690 F.2d 1363, 1366 (11th Cir. 1982)). In other words, the proposed intervenor "must be at least ... [a] real party in interest in the transaction which is the subject of the proceeding." *Id.* Mr. Stoddard has not shown that he has a "direct, substantial, legally protectible interest in the proceeding" or that he is "at least a real party in interest in the proceeding."

The subject matter of Plaintiff Hason's complaint is Hason's claim for damages based on the specific manner in which the Board has conducted its character and fitness review concerning Plaintiff *Hason's* application for admission. In contrast, the subject matter of Intervenor Stoddard's complaint is Mr. Stoddard's claim for damages based on the specific manner in which the Board has conducted its character and fitness review concerning Mr. *Stoddard's* application for admission. Each complaint arises out of the particular factual circumstances of the respective individual's separate Bar admission proceeding and the Board's separate handling of each application for admission. Moreover, Plaintiff Hason asserts claims not asserted by Mr. Stoddard; and Mr. Stoddard asserts claims not asserted by Plaintiff Hason.

Both Plaintiff Hason and Intervenor Stoddard independently seek damages in excess of $10,000,000 against the Defendants. Although both complaints include a general request for unspecified injunctive relief, neither complaint seeks any *specific* form of injunctive relief. Nothing in Plaintiff Hason's case directly impacts the ability of Mr. Stoddard to seek monetary damages against the Defendants because Mr. Stoddard has no interest in the particular "transaction" that is the subject of Plaintiff Hason's pending action.

Moreover, Mr. Stoddard has a pending application for admission before the Board. Thus, Mr. Stoddard is barred by the *Younger* abstention doctrine from litigating his federal complaint.

C. Mr. Stoddard has No Interest that will be Impaired or Impeded by Disposition of Plaintiff Hason's action

Even assuming arguendo that Mr. Stoddard had some "protectible interest" in the subject matter of Plaintiff Hason's action, Mr. Stoddard has not shown that "he is so situated that disposition of the [Hason] action, as a practical matter, may impede or impair [Mr. Stoddard's] ability to protect that interest."

Although courts have granted intervention based on potential *stare decisis* effects in certain limited cases, the circumstances of the instant case do not support intervention on this basis. The Eleventh Circuit has stated that the mere potential for a negative *stare decisis* effect "does not automatically" warrant intervention. *Worlds v. Dept. of Health and Rehabilitative Servs*., 929 F.2d 591, 593 (11th Cir.1991) (affirming denial of intervention in employment discrimination case). It is only where a proposed intervenor "claims an interest *in the very property and very transaction* that is the subject of the main action" that a potential *stare decisis* effect will supply that practical disadvantage which may warrant intervention of right. *See Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir.1989) (emphasis added).

In *Chiles*, *supra*, for instance, the proposed intervenors were detainees in an INS facility in Dade County who were confined in the very facility whose operation was being challenged as unlawful in the underlying lawsuit. *Id.* Similarly, in *Stone v. First Union Corp.*, 371 F.3d 1305 (11th Cir. 2004), the plaintiffs in the underlying action and

the proposed intervenors were all *employees* of the same defendant (the employer, First Union) who were all challenging "the *same* First Union policy" as being in violation of the ADEA. *Id.* at 1310 (emphasis added). Thus, the Court in *Stone v. First Union* concluded that, given the particular circumstances in that case, the impairment to the proposed intervenor's interests was "significant." *Id.*[7]

Mr. Stoddard, unlike the proposed intervenors in *Chiles* and *Stone,* is not "so situated that disposition of the [underlying] action, as a practical matter, may impede or impair his ability to protect [his] interest." This is not a case where the proposed intervenor and the underlying plaintiff are both attacking the facial validity of a single rule of the Board of Bar Examiners. Although the complaint of Plaintiff Hason and that of Mr. Stoddard both involve their respective applications for admission to The Florida Bar, their factual allegations relate to the specific actions taken separately by the Board with respect to each of their applications for admission. Thus, intervention is not warranted here. *See, e.g.*, *Worlds v. Dept. of Health and Rehabilitative Servs*., 929 F.2d 591 (11th Cir.1991) (affirming denial of intervention in employment discrimination action because *stari decisis* effect of decision in underlying action would not impair or impede ability of proposed intervenor to separately litigate his claim).

Mr. Stoddard's circumstance is analogous to the circumstances in *ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318 (11th Cir. 1990), where intervention was likewise denied. In *ManaSota-88*, the plaintiff filed suit under the Clean Water Act to compel government officials to identify Florida waters that failed to comply with federal water quality

[7] Additionally, unlike the instant case, the defendants in *Stone*, *supra*, had conceded that the motion to intervene was timely and that the proposed intervenors had a legally protectible interest as employees of the defendant challenging the same policy that was the subject of the underlying action. *Stone*, 371 F.3d at 1309.

standards and to establish maximum daily waste loads for such waters and streams. The proposed intervenor FCG contended that it had a significant, protectable interest related to the action brought by ManaSota-88 because FCG members are required to comply with water quality standards and effluent limitations promulgated pursuant to the Clean Water Act. The district court determined that FCG demonstrated neither a sufficient interest in the issues raised by the ManaSota-88 claims nor that its economic interests will be impeded by disposition of that action. The applicant for intervention in *Manasota-88*, like Mr. Stoddard, based its argument on the fact that its members were required to comply with the some of the same laws that were involved in Plaintiff's complaint. As in *ManaSota*-88, resolution of Plaintiff's claims in the case at bar will not produce any immediate effect on Mr. Stoddard, nor will it impair or impede any interest he may have.

D. Inadequate Representation

Finally, Mr. Stoddard has failed to show that any interest he may have is inadequately represented by Plaintiff Hason. Adequate representation exists "if no collusion is shown between the representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervenor, and if the representative does not fail in fulfillment of his duty." *Federal Sav. and Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993) (*quoting United States v. United States Steel Corp.*, 548 F.2d 1232, 1236 (5th Cir.1977)). Mr. Stoddard does not present any evidence to rebut the presumption in favor of adequate representation other than to say that because Plaintiff Hason is a "busy practicing physician physically located in California…and 'pro se'…there is at least a possibility

that [Plaintiff] will not have time to research and brief all of the important issues to be decided." (doc. 38, ¶9).

Mr. Stodadrd has not shown, or even alleged, any of the *Falls Chase* factors in his motion to intervene. There is no indication of any collusion between Plaintiff Hason and the defendants. There is no indication that the interests of Plaintiff Hason are adverse to those of Mr. Stoddard. There has been no showing that Plaintiff Hason has failed in his duty.

Because Mr. Stoddard satisfies none of the necessary requirements for intervention as a matter of right, his Motion to Intervene under Rule 24(a)(2) should be denied.

III. <u>Mr. Stoddard is Not Entitled to "Permissive" Intervention</u>

A person seeking permissive intervention pursuant to Rule 24(b)(2) must show that: (1) his application to intervene is timely; and (2) his claim or defense and the main action have a question of law or fact in common. Fed. R. Civ. P 24(b). However, even if both of those requirements are satisfied, this merely gives the district court the discretion to decide whether the proposed intervenor should be allowed to intervene. The district court still has the discretion to deny intervention, and its decision is reviewed for an abuse of discretion. *Sellers v. United States*, 709 F.2d 1469, 1471 (11th Cir.1983). In exercising its discretion regarding whether to permit intervention, the district court should consider, among other things, whether the intervention will delay or prejudice the adjudication of the rights of the original parties. *Id.* As outlined below, courts have also identified several additional factors that should also be taken into account when making a determination relating to permissive intervention.

The Defendants submit that Mr. Stoddard should not be allowed to intervene under Rule 24(b)(2). As described above, Mr. Stoddard's application for intervention is untimely. Mr. Hason's complaint has been pending since August 2005. Mr. Stoddard had "for some time considered filing a suit for damages and for injunctive relief against these Defendants and has forborn from doing so because his application for bar admission remains pending." (doc. 38, ¶7). The Defendants' Motion to Dismiss is ripe for decision. Among the grounds asserted by defendants is the defense of judicial immunity. Allowing Mr. Stoddard to intervene will unduly delay the disposition of this matter.

Additionally, the denial of Mr. Stoddard's Motion to Intervene should not legally prejudice his ability to seek relief in other fora. Mr. Stoddard may petition the Florida Supreme Court to review the timeliness and substance of the Board's decisions relating to Mr. Stoddard's character and fitness for admission. *See* Fla. Bar Admiss. R. 3-23.7, 3-40.1, 3-40.2. A denial of intervention will also not preclude Mr. Stoddard from filing a separate civil action.[8] Thus, this court has discretion to deny intervention. *See Korioth v. Briscoe*, 523 F.2d 1271 (5th Cir. 1975) (holding that when an appellant has other adequate means of asserting its rights, a charge of abuse of discretion in the denial of a motion for permissive intervention would appear to be almost untenable on its face); *Worlds v. Dept. of Health and Rehabilitative Servs.*, 929 F.2d 591, 595 n. 20 (11th Cir.1991) (same).

Defendants again note that Mr. Stoddard has had prior opportunities to assert the types of claims he seeks to assert by intervention in this action. In *U.S. v. Marion County School Dist.*, 590 F.2d 146, 148 (5th DCA 1979), the court addressed the importance of

[8] Of course, any complaint filed by Mr. Stoddard (whether at this time or later) would be subject to the defenses asserted by the defendants in response to any such complaint.

such a prior opportunity: "The district court, in exercising its discretion to weigh the relative prejudice to each, must put into the balance against the movant its prior opportunities to assert its position and its protection through representation by the existing parties." This same principle was addressed by the court in *Mitchell v. McCorstin*, 728 F.2d 1422 (11th Cir. 1984), where the court found that the trial court did not abuse its discretion in denying a motion to intervene in an age discrimination action where the proposed intervenor had his own complex age discrimination case against the same employer pending for many years and had failed to explain what additional benefit he would gain from permissive intervention.

The factual and procedural differences between Plaintiff's case and Mr. Stoddard's case are additional factors that weigh against permissive intervention in this matter. *See Rolle v. New York City Housing Authority*, 294 F.Supp. 574, (D.C.N.Y.1969) (holding that intervention would not be allowed in the court's discretion, since, although the broadly stated claims of the applicant and Plaintiff were similar and in some respects identical, the factual and legal posture of their two cases appeared to be substantially different). The status of each of their applications for admission is different; they are asserting different types of claims in their respective complaints; and the factual basis for each of their complaints is also different.

Finally, as noted above, Mr. Stoddard's action is barred by the abstention doctrine of *Younger v. Harris*, *supra*.

IV. Conclusion

The proposed intervenor, Mr. Stoddard, has not demonstrated that he satisfies the requirements for intervention as a matter of right under Rule 24(a)(2), and he also has not

shown that this District Court should exercise its discretion to allow him to intervene under Rule 24(b)(2). Accordingly, Defendants request that the Motion to Intervene be denied.

Respectfully submitted,

s/ James J. Dean

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by electronic service via ECM/CM filing and/or by United States Mail this 16th day of June, 2006, to Michael J. Hason, 11815 Mayfield Ave., Brentwood, CA 90049-1750 and Philip J. Stoddard, 248 Shores Blvd., St. Augustine, FL 32086.

s/James J. Dean
James J. Dean