

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

LAURA FORD,

Plaintiff,

vs.

Case No. 4:06cv244-RH/WCS

THE SUPREME COURT OF FLORIDA,  
BARBARA J. PARIENTE,  
FLORIDA BOARD OF BAR EXAMINERS,  
KATHRYN RESSEL,  
ELEANOR MITCHELL HUNTER,  
and JANE DOE PROCTOR,

Defendants.

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**REPORT AND RECOMMENDATION**

This case was transferred here from the Middle District of Florida. Contrary to Plaintiff's argument, doc. 35, pp. 4-5, District Judge Presnell simply denied the initial motion to dismiss with respect to the improper venue defense. Doc. 29 (former docket number 27, electronic docket number 29-29). On June 1, 2006, an order was entered directing the *pro se* Plaintiff to respond to the renewed motion to dismiss, doc. 30, and supporting memorandum of law, doc. 31, filed by Defendants Florida Supreme Court

and Former Chief Justice Barbara J. Pariente.<sup>1</sup> Doc. 32. The remaining Defendants (Florida Board of Bar Examiners, Hunter, Ressel, and Jane Doe Proctor) also filed a renewed motion to dismiss with an incorporated memorandum of law. Doc. 33. Plaintiff was advised to respond to the renewed motion to dismiss, doc. 33, as well. Plaintiff has filed one response, doc. 35, for both motions to dismiss.

### **Standard of Review**

Dismissal of a complaint, or a portion thereof, pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted should not be ordered unless it appears beyond doubt that Plaintiff can prove no set of facts in support of her claims which would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). A court must accept as true the allegations of the complaint when ruling upon such a motion. Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485 (11th Cir. 1992)(citation omitted), *cert. denied*, 113 S. Ct. 1586 (1993). *Pro se* complaints should be held to less stringent standards than those drafted by an attorney. Wright v. Newsome, 795 F.2d 964, 967 (11th Cir. 1986), *citing* Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972).

Federal Rule of Civil Procedure 8(a)(2) . . . provides that a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

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<sup>1</sup> The current Chief Justice is automatically substituted in his official capacity pursuant to FED. R. CIV. P. 25(d), but since this suit must be dismissed, that procedural step is not important.

Swierkiewicz v. Sorema, 534 U.S. 506, 122 S.Ct. 992, 998, 152 L.Ed.2d 1 (2002) ("Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions.").

If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56.

122 S.Ct. at 998-999.

### **Plaintiff's allegations in the complaint, doc. 1<sup>2</sup>**

Plaintiff alleges she has been irreparably harmed because the Defendants have a "pattern and practice of denying accommodations for the bar exam to bar examinees and violating every bar examinees U.S. Constitutional rights and federal rights." Doc. 1, p. 3. Plaintiff also contends that her rights under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 have been violated. *Id.*, at 2-3.

In 1989, Plaintiff was involved in a car accident and "sustain permanent and chronic physical injuries." *Id.*, at 5. Plaintiff was diagnosed with "a 3% and 4% permanent injury to her neck and shoulder areas." *Id.* Plaintiff has "chronic left trapezius myositis" and "myofacial [myofascial] pain syndrome." *Id.*

Plaintiff graduated from Western New England College of Law in 2001 and holds a J.D. *Id.*, at 5. Having met the requirements to sit for the bar exam, Plaintiff took the examination in 2001, but received a notice on September 10, 2001, "indicating she had failed Parts A & B of the general bar exam." *Id.*, at 6. In November, 2001, Plaintiff submitted a request for a bar exam "accommodation" and asked for one day of rest between the two days of the examination, and a request for 10 minutes rest breaks in

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<sup>2</sup> This is doc. 29-2 on the electronic docket.

addition to 25% extra time. *Id.* Plaintiff's requests were denied, although she was apparently provided unspecified other "limited accommodations." *Id.*, at 6-7.

Plaintiff took the examination again in February of 2002, but received notification in April of 2002, that she had again "failed Parts A & B of the general bar exam." *Id.*, at 7. On April 29, 2002, Plaintiff submitted another request for accommodations to take the bar exam in July. *Id.* This second request, which also contained documentation from Plaintiff's physician, was denied<sup>3</sup> in June. *Id.* The letter of denial from the Board advised Plaintiff to "provide new and additional matters that were not previously considered" by July 1, 2003, in time for consideration prior to the July, 2003, administration of the bar exam. *Id.*, at 7-8.<sup>4</sup> Plaintiff filed a petition for reconsideration on June 29, 2002, and on July 18, 2002, the request for "one day of rest between exams, the request for 33% extra time on the essay portion of the exam . . . ." *Id.*, at 8. On September 17, 2002, Plaintiff received an "Admission [S]tatus Report" indicating she passed Part A," which is the Florida portion of the bar exam, but failed Part B, which is the multi-state portion of the exam. *Id.*, at 8.

In November of 2002, Plaintiff requested accommodations for the February, 2003, bar examination, "indicating that the accommodations provided in July 2002 were adequate, only because" she passed Part A and now only needed to retake Part B of

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<sup>3</sup> Plaintiff alleges more specifically that the Board of Bar Examiners denied her request for "one day of rest between exams, 33% extra time on the essay portion of exam, [sic]10 minutes rest breaks per hour, and no drinks were allowed." *Id.*, at 7.

<sup>4</sup> Plaintiff's complaint mistakenly lists this as a 2003 deadline, but presumably, it was in time for the July, 2002, bar examination. Doc. 1, pp. 7-8. Plaintiff took the exam in July of 2002 as she alleged having received another "Admission Status Report" in September of 2002. *Id.*, at 8.

the exam. *Id.*, at 8. Plaintiff was advised that the previously provided accommodations would be provided and her request was granted. *Id.*, at 9. However, Plaintiff alleges that there were problems because the proctor was unaware of the accommodations to be provided to Plaintiff and Plaintiff lost 9 minutes of exam time. *Id.*, at 10. Plaintiff claims that if she had not lost this time, she "would have made the . . . points needed to pass the MBE portion of the exam." *Id.*, at 11.

Plaintiff filed a petition for review in which she, *inter alia*, requested that her July, 2002, exam score be averaged with her February, 2003, exam "as a remedy for past denials of reasonable accommodations." *Id.*, at 11. Plaintiff also sought to have her MPRE scores reinstated since the score was deleted due to the passage of time since Plaintiff took the exam. *Id.* Plaintiff's request was denied. *Id.*, at 12.

On December 5, 2003, Plaintiff filed "an amended petition for review to the supreme Court as an appeal . . . ." *Id.*, at 12. Plaintiff sought review of the "denial of reasonable accommodations," as well as her claims of violations of her constitutional rights, violations of Bar rules, and the violation of rights under "the American Disabilities Act." *Id.* Plaintiff's request for oral argument was not granted, and by order entered on September 23, 2004, Plaintiff's "amended petition for review" was denied. *Id.*, at 13.

Plaintiff then initiated this lawsuit in the Middle District in January, 2006. Doc. 1. The case was subsequently transferred to this District. Plaintiff asserted the factual allegations as stated above, and claimed Defendants failed to provide reasons explaining why her requests were rejected, and claimed no harm or burden would have resulted in granting a day of rest between the two days of testing. *Id.*, at 18. Plaintiff alleged that Defendants "have sequestered other examinees and have allowed for more

days of testing time." *Id.*, at 19. She claimed that Defendants have discriminated against her "in failing to accommodate her disabilities in violation of the ADA, 42 U.S.C. § 12101 et seq." *Id.* She brings other state law claims such as negligence, violations of the state Constitution, conspiracy claims, and the like. Doc. 1.

Plaintiff seeks injunctive relief. *E.g.*, Doc. 1, p. 22. She asks that certain Bar rules be declared unconstitutional, that her Bar scores be averaged and that she be found to have passed the Bar examination. *Id.* She also asks that she be awarded monetary damages. *Id.*

### **Renewed Motions to Dismiss, docs. 30 and 33**

Defendants Florida Supreme Court and Justice Pariente contend that Plaintiff's case "should be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman abstention doctrine." Doc. 30, p. 2. Defendants further contend dismissal is appropriate because this case is not ripe as Plaintiff lacks standing. *Id.*

Defendants Pariente and the Court assert that this complaint arises directly out of Plaintiff's application for admission to the Florida Bar and decisions concerning that application. Doc. 31, p. 6. "Plaintiff expressly alleges that she presented all of these matters to the Florida Supreme Court and that the Florida Supreme Court made a final decision regarding her complaints that form the basis of this action." *Id.* Therefore, to the degree Plaintiff's complaint is challenging the decisions reached on her prior applications for admission, Defendants urge that the complaint must be dismissed under the Rooker-Feldman doctrine. *Id.*, at 7.

Defendants additionally contend that where Plaintiff is attempting to avoid dismissal under Rooker by challenging "the facial validity of a rule of general

applicability promulgated in a nonjudicial proceeding, her claim must fail." *Id.*, at 7.

Defendants argue that Plaintiff is not merely challenging a rule of the Florida Supreme Court relating to admission to the Bar, but challenging "the manner in which the rules have been applied to Plaintiff in her case." *Id.*

Furthermore, as noted by Defendants, Plaintiff's complaint does not contain any allegations asserting that "she has a pending application for admission to the Florida Bar." *Id.*, at 7. Thus, it is argued that Plaintiff's claims are not ripe for review as Plaintiff lacks standing. Moreover, even if Plaintiff did have a pending application, Defendants assert that a federal court must avoid interference with an ongoing state judicial proceeding. *Id.*, at 9-10, *citing* Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982), Younger v. Harris, 401 U.S. 37 (1971). Finally, to the degree Plaintiff seeks monetary damages from these Defendants, they claim their entitlement to Eleventh Amendment immunity and absolute judicial immunity. *Id.*, at 11-12.

Similar arguments were raised by the other Defendants (the Florida Board of Bar Examiners, and Defendants Hunter, Ressel, and Jane Doe Proctor). Doc. 33. Beyond noting there is Eleventh Amendment immunity and judicial immunity, they also raised Rooker-Feldman, Younger abstention, and Plaintiff's lack of standing as a basis for dismissal. *Id.*

### **Plaintiff's response, doc. 35**

Plaintiff claims that the Rooker-Feldman doctrine is inapplicable because:

Plaintiff never received any meaningful due process in which a state court judgment could have occurred because when she filed her accommodation requests that were denied, and when she filed her

administrative petition with the Defendant Supreme Court she did not receive any meaningful due process and any decision was purely administrative.

Doc. 35, p. 6. She further contends that she did not have due process because she could not appeal the denial of a request for accommodation until after the examination.

*Id.* Additionally, Plaintiff claims that the Supreme Court decision is really an administrative decision, not a judicial one, that Plaintiff did not receive independent judicial review, and this review process is an "unconstitutional violation of separation of powers . . . ." *Id.*, at 7. In short, Plaintiff contends that each of Defendants' reasons for dismissal are inappropriate. Doc. 35.

### **Rooker-Feldman doctrine**

"The Rooker-Feldman doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by 'state-court losers' challenging 'state-court judgments rendered before the district court proceedings commenced.' " Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005), quoted in Lance v. Dennis, 546 U.S. 459, 126 S.Ct. 1198, 1199 (2006).<sup>5</sup> This

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<sup>5</sup> The Court in Lance explained the history of this doctrine as follows:

The Rooker-Feldman doctrine takes its name from the only two cases in which we have applied this rule to find that a federal district court lacked jurisdiction. In Rooker, a party who had lost in the Indiana Supreme Court, and failed to obtain review in this Court, filed an action in federal district court challenging the constitutionality of the state-court judgment. We viewed the action as tantamount to an appeal of the Indiana Supreme Court decision, over which only this Court had jurisdiction, and said that the "aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly." 263 U.S., at 416, 44 S.Ct. 149. Feldman, decided 60 years later, concerned slightly different circumstances, with similar results. The plaintiffs there had been refused admission to the District of Columbia bar by the District of Columbia Court of Appeals, and sought review of these decisions in federal district court. Our decision held that to

doctrine operates in a narrow manner, and is limited to those situations where the losing party in state court is essentially seeking review of that judgment in an appellate posture and requesting the prior judgment be reversed or modified. Exxon Mobil Corp., 544 U.S. at 284-85, 125 S.Ct. at 1522.

The case at bar is similar to one of the two cases which is the bedrock of this doctrine – District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). As explained by the Court in Exxon Mobil Corp. v. Saudi Basic Industries Corp., *supra*, here were the facts of that case:

The two plaintiffs in that case, Hickey and Feldman, neither of whom had graduated from an accredited law school, petitioned the District of Columbia Court of Appeals to waive a court Rule that required D.C. bar applicants to have graduated from a law school approved by the American Bar Association. After the D.C. court denied their waiver requests, Hickey and Feldman filed suits in the United States District Court for the District of Columbia.

Feldman, 460 U.S. at 465-473, 103 S.Ct. 1303, *cited in* Exxon Mobil, 544 U.S. at 285, 125 S.Ct. at 1522. The Court held that the federal district court "lacked authority to review a final judicial determination" of these state bar applications because only the Supreme Court is vested with appellate authority over judgments of state courts. Feldman, 460 U.S. at 479-86, *cited in* Exxon Mobil, 544 U.S. at 285-86, 125 S.Ct. at 1522. A federal court would have the ability to address a constitutional challenge to state bar rules, but would lack jurisdiction to "review a final state-court judgment in a

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the extent plaintiffs challenged the Court of Appeals decisions themselves – as opposed to the bar admission rules promulgated nonjudicially by the Court of Appeals-their sole avenue of review was with this Court. 460 U.S., at 476, 103 S.Ct. 1303.

Lance v. Dennis, 126 S.Ct. 1198, 1201 (2006).

judicial proceeding." Feldman, 460 U.S. at 486, 103 S.Ct. 1303, *quoted in Exxon Mobil*, 544 U.S. at 286, 125 S.Ct. at 1523. Accordingly, so long as a plaintiff is solely challenging a Florida Bar rule and not seeking review of a rule in a particular case the action could proceed. *Id.* See, Dubuc v. Michigan Board of Law Examiners, 342 F.3d 610 (6th Cir. 2003) (First Amendment challenge to a rule governing timing of re-applications to the bar not in contravention of Rooker-Feldman).

Thus, this circuit has repeatedly held that an applicant to The Florida Bar may not bring a suit in district court challenging the Florida Supreme Court's denial of the application. Berman v. Florida Bd. of Bar Examiners, 794 F.2d 1529 (11th Cir. 1986) (diploma privilege claim); Kirkpatrick v. Shaw, 70 F.3d 100, 102 (11th Cir. 1995) (character review); Dale v. Moore, 121 F.3d 624, 625-627 (11th Cir. 1997).

Plaintiff here is not challenging a bar rule of general applicability. Plaintiff is challenging specific changes (or the lack of change) to bar procedures for taking the examination in her case. These federal claims have been reviewed and decided by the Florida Supreme Court. Indeed, Plaintiff claims that her case before the Florida Supreme Court "was for 'waiver of a bar exam rule' and not a 'bar admission proceeding.'" Doc. 35, p. 10. Plaintiff's claims are inextricably combined with the Florida Supreme Court's rejection of her bar application as she complains that waivers were not sufficiently provided to her, causing her to fail the admission examination.

A proceeding before the Florida Supreme Court challenging a decision not to admit a particular applicant to the bar is a judicial proceeding. Thomas v. Kadish, 748 F.2d 276, 282 (5th Cir. 1984), *cert. denied*, 473 U.S. 907 (1985) (finding that the Texas Bar's role in denying an application to the bar "may be analogized to the function of a

special master taking actions of an essentially judicial nature"); Feldman. This is so because the Florida Supreme Court has "exclusive jurisdiction" to regulate bar admission and the Florida Board of Bar Examiners was created "as an agency of the Court for the express purpose of regulating the admission of applicants to the Florida Bar." Doc. 31, p. 6, *citing* Fla. Bar Admiss. R. 1-12; Florida Bd. of Bar Examiners v. Applicant, 443 So.2d 71, 74 (Fla. 1983). The Florida Supreme Court and Justice Barbara Pariente are sued because of the final decision the Supreme Court rendered upon Plaintiff's claims challenging the decision rendered by the Board on Plaintiff's bar application. That is their only involvement in Plaintiff's claims. Plaintiff's contention that their decision is "nothing more than a final agency order," doc. 35, p. 9, is not correct. The decision was from a court, rendered in its judicial capacity as a final judgment, in an appeal pursuant to the Bar's rules.

In summary, Plaintiff seeks federal district court review of the state court judgment. Such review is barred by the Rooker-Feldman doctrine. The argument that the rules do not "provide any meaningful due process" is but another way to challenge the judgment of the Florida Supreme Court. The only remedy for a challenge to that judgment is a petition for writ of certiorari in the United States Supreme Court.

### **Standing as to a future application**

It does not appear that Plaintiff has a pending application for admission to the Florida Bar. In responding to the motion to dismiss, Plaintiff does not assert that she currently has a pending application. She only states that she "had standing when the Defendants deprived her of her constitutional rights and Plaintiff continues to have standing because she is eligible to sit for the Florida bar exam . . . ." Doc. 35, p. 13.

Article III of the United States Constitution requires there be a live "case or controversy" when a federal court decides a case; "it is not enough that there may have been a live case or controversy when the case" was filed. Burke v. Barnes, 479 U.S. 361, 363, 107 S.Ct. 734, 736, 93 L.Ed.2d 732 (1987), *quoted in* Tanner Advertising Group, L.L.C. v. Fayette County, GA, 451 F.3d 777, 785 (11th Cir. 2006). Past injury or exposure to illegal conduct does not present a present case or controversy involving injunctive relief if unaccompanied by any continuing, present adverse effects. O'Shea v. Littleton, 414 U.S. 488, 495-96, 94 S. Ct. 669, 675-76, 38 L. Ed. 2d 674 (1978). Plaintiff must allege that any alleged injury is "actual or imminent, not conjectural or hypothetical." Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 2104, 132 L. Ed. 2d 158 (1995); Church v. City of Huntsville, 30 F.3d 1332, 1337 (11th Cir. 1994).

There is no live case or controversy alleged here as to future actions by Defendants because Plaintiff does not currently have an application pending. "In ADA cases, courts have held that a plaintiff lacks standing to seek injunctive relief unless he alleges facts giving rise to an inference that he will suffer future discrimination by the defendant." Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001). Should Plaintiff again apply to take the bar examination, Defendants might afford her the accommodations that she desires, or she might pass the examination without all of the accommodations requested. Without a pending application upon which the bar has taken concrete actions, Plaintiff has no standing. Thus, Defendants' motion to dismiss this action should also be granted because Plaintiff lacks standing.

**Other issues**

If the court adopts this report and recommendation, it need not determine the other defenses raised by Defendants, that is, abstention pursuant to Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), judicial immunity, and Eleventh Amendment immunity. It is noted, however, that this court has ruled that abstention is required as to a pending application to be admitted to The Florida Bar. Lawrence v. Schwiep, No. 4:05cv14-RH/WCS, doc. 42 (order of dismissal), *aff'd*, 196 Fed. Appx. 858, 2006 WL 2690232 (11th Cir. 2006) (also 38-2, pp. 10-11 on the electronic docket).

**Conclusion**

It is **RECOMMENDED** that the Defendants' motions to dismiss, docs. 30 and 33, be **GRANTED**, that Plaintiff's complaint, doc. 1, be **DISMISSED** because Plaintiff's claims are barred by the Rooker-Feldman doctrine as to past events and for lack of standing as to a future application.

**IN CHAMBERS** at Tallahassee, Florida, on February 15, 2007.

s/ William C. Sherrill, Jr.  
WILLIAM C. SHERRILL, JR.  
UNITED STATES MAGISTRATE JUDGE

**NOTICE TO THE PARTIES**

**A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.**