

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LAURA FORD,

Plaintiff,

vs.

Case No.: 6:06-cv-3-Orl-31JGG

THE SUPREME COURT
OF FLORIDA et al.

Defendants.

_____ /

**FBBE DEFENDANTS' MOTION TO STAY
RULE 26 DISCLOSURES AND DISCOVERY**

The Florida Board of Bar Examiners (“FBBE”); Eleanor Hunter, the FBBE’s current Executive Director (“Hunter”); Kathryn Ressel, the FBBE’s former Executive Director (Ressel); and Jane Doe Proctor (“Jane Doe”), an alleged agent of the FBBE (collectively, “FBBE Defendants”), move for an Order staying discovery, including Rule 26 disclosures, pending a ruling on the FBBE Defendants’ Motion to Dismiss. Defendants make this Motion pursuant to Rules 16 and 26, Federal Rules of Civil Procedure, and the inherent authority of the Court. In support of the Motion, Defendants state as follows:

1. This action arises out of the Board’s proceeding on Plaintiff’s application for admission to The Florida Bar. Plaintiff seeks injunctive relief and damages.
2. The Plaintiff has sued the Board’s current and former Executive Director and an FBBE examination proctor in these individuals’ *personal capacity*; and Plaintiff seeks monetary damages against them personally in an amount in excess of \$5,000,000.

Because it is well-settled that the Board's Executive Director and other agents of the FBBE are absolutely immune from any claim for damages relating to the Board's proceeding on an application for admission to The Florida Bar, these Defendants have moved to dismiss the action based on absolute judicial immunity (and qualified immunity).

3. The Defendants also have moved to dismiss this action based on the following alternative, and independently-sufficient, grounds: (i) improper venue; (ii) lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine;¹ (iii) lack of standing or ripeness; (iv) the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971); (v) lack of subject matter jurisdiction under the Eleventh Amendment; and (vi) failure to state a claim.

4. The Defendants submit that given the individual Defendants' claims of absolute immunity from suit in this action and the other case-dispositive grounds for dismissal set forth in Defendants' Motion to Dismiss, there is good cause to stay discovery pending disposition of Defendants' Motion to Dismiss.

Certificate of Conference with Opposing Party

Undersigned counsel certifies that he has conferred with the Plaintiff, *pro se*, and with counsel for the other defendants in this matter. Chief Justice Barbara J. Pariente and the Florida Supreme Court consent to and join in this Motion. The Plaintiff Laura Ford opposes a Stay pending her review of the instant Motion.

¹ See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

WHEREFORE, based on the reasons and authorities discussed below in Defendants' Memorandum of Law, Defendants respectfully request that discovery in this matter be STAYED pending the Court's disposition of Defendants' Motion to Dismiss.

Memorandum of Law

District courts have "broad discretion in deciding how best to manage the cases before them." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir. 1997). This discretion includes the authority to issue a stay of discovery. Moreover, the Eleventh Circuit Court of Appeals has made clear that district courts should stay discovery, pending disposition of motions to dismiss, in appropriate cases. *See Moore v. Potter*, 141 Fed. Appx. 803, 2005 WL 1600194 (11th Cir. July 8, 2005) (affirming stay of discovery pending disposition of motion to dismiss for failure to state a claim) (copy of decision attached as Exhibit "A"); *Patterson v. United States Postal Service*, 901 F.2d 927, 929 (11th Cir. 1990) (affirming stay of discovery pending disposition of motion to dismiss or for summary judgment); *Cf. Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997) (holding that district court should not have required defendant to provide discovery on plaintiff's fraud claim until after court had decided defendants' motion to dismiss that claim). *Accord Petrus v. Bowen*, 833 F.2d 581 (5th Cir. 1987) ("A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined. ... We hold that the district court properly deferred discovery while deciding whether the defendants were proper parties to this action.").

District courts within the Eleventh Circuit have, therefore, stayed discovery pending a ruling on motions to dismiss in appropriate cases. *See, e.g., Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689 (M.D. Fla. 2003), *aff'd*, 87 Fed. Appx. 713 (11th Cir. 2003), *cert. denied*, 541 U.S. 1049 (2004); *In re: Managed Care Litigation*, 2001 WL 664391 (S.D. Fla. 2001); *Lawrence v. Schwiep et al.*, Case No. 4:05cv14-RH/WCS (June 7, 2005) (Hinkle, J.) (Order staying all proceedings pending a ruling on motions to dismiss filed by Board's Executive Director Eleanor Hunter and other defendants) (Copy of Order attached at Exhibit "B" hereto).²

In *Patterson v. United States Postal Service*, 901 F.2d 927, 929 (11th Cir. 1990), the Eleventh Circuit affirmed the district court's stay of discovery pending its ruling on a defendant's motion to dismiss or for summary judgment on an age discrimination claim. The Eleventh Circuit concluded that the district court's stay of discovery pending disposition of the defendant's case-dispositive motion was quite appropriate, noting that the district court had sufficient information before it to rule on the motion when the stay order was issued. The same is true in the instant case. The issues raised in Defendants' motion to dismiss are case-dispositive; and there is sufficient information before the Court in the instant case for a ruling to be made on Defendants' motion to dismiss.

In *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997), the Eleventh Circuit reversed an order compelling discovery from the defendants. The order compelling discovery had been entered by the district court in that case even though the

² In the *Lawrence* case, the parties had initially stipulated to a stay of discovery, and the Court later extended the stay *sua sponte* pending disposition of the defendants' motions to dismiss.

district court had not ruled on a long-pending motion to dismiss which, if granted, would have substantially narrowed the scope of discovery in the case. In its decision, the Eleventh Circuit discussed the burdens imposed by the discovery process and directed that “[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief should ... be resolved before discovery begins.” *Id.* at 1367 (footnote omitted). The Defendants in the instant case, like the defendant in *Chudasama*, have asserted facial challenges to the legal sufficiency of Plaintiff’s claims.

Moreover, as noted above, Defendants have moved to dismiss this action based on judicial immunity and qualified immunity. For the reasons explained in Defendants’ Motion to Dismiss (and based on the authorities cited therein), it is well-settled that Defendants are entitled to absolute immunity from any action for damages that arises out of the Board’s proceeding on an application for admission to The Florida Bar.

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). Accordingly, “judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial.” *Id. citing Pierson v. Ray*, 386 U.S., at 554 (“[I]mmunity applies even when the judge is accused of acting maliciously and corruptly”).³

Thus, where defendants (such as Defendants Hunter, Ressel and Jane Doe Proctor in the instant case) have asserted the defense of judicial immunity in a motion to dismiss, the defendants’ motion to dismiss should be decided before the defendants are subjected to discovery and the other burdens of litigation. Otherwise, the very purpose for the immunity will be lost. *See Blinco v. Green Tree Servicing*, 366 F.3d 1249 (11th Cir. 2004) (observing that district courts should stay discovery pending appeals of denials of immunity because if discovery is not stayed, the immunity will effectively be lost), *citing Elliott v. Perez*, 751 F.2d 1472, 1478 (5th Cir. 1985) (“[S]ubjecting officials to ... traditional discovery ... concerning acts for which they are likely immune undercuts the protection from government disruption which official immunity is supposed to afford.”);

³ In *Mireles v. Waco*, 502 U.S. 9 (1991), the Supreme Court held that Judge Mireless was entitled to immunity *from suit* (including discovery), even though plaintiff alleged that “after he [an attorney] failed to appear for the initial call of Judge Mireles’ morning calendar, the judge, ‘angered by the absence of attorneys from his courtroom,’ ordered the police officer defendants ‘to forcibly and with excessive force seize and bring plaintiff into his courtroom.’”

In re Lickman, 304 B.R. 897 (M.D. Fla. 2004) (quashing discovery subpoenas issued to a judge's judicial assistant and law clerk, based on policy of judicial immunity, noting that "it would be senseless and disruptive to allow for discovery.").

As the Eleventh Circuit explained in *Chadasma*, discovery imposes substantial costs on the litigant from whom discovery is sought, including "the time spent searching for and compiling relevant documents; the time, expense, and aggravation of preparing for and attending depositions; the costs of copying and shipping documents; and the attorneys' fees generated in interpreting discovery requests, drafting responses to interrogatories and coordinating responses to production requests, advising the client as to which documents should be disclosed and which ones withheld, and determining whether certain information is privileged." *Chudasama*, 123 F.3d at 1367-68. If Defendants Hunter, Ressel and Proctor are subjected to these burdens of discovery and the litigation process, prior to the disposition of the Defendants' Motion to Dismiss, they will effectively lose the benefits that the doctrine of official-immunity is intended to provide to them.

Accordingly, Defendants request that discovery (including Rule 26 disclosures) in this action be STAYED pending the Court's ruling on the Defendants' Motion to Dismiss.⁴

⁴ As explained in Defendants' Motion to Dismiss, the Board's proceeding on Plaintiff's application for admission to The Florida Bar is a judicial proceeding. Accordingly, because this action arises out of Plaintiff's application for admission to The Florida Bar, Defendants submit that this action is *exempt* from the automatic disclosure requirements of Rule 26(a)(1) on the ground that this is a "proceeding ancillary to proceedings in other courts." See Rule 26(E)(vii), Fla. R. Civ. P. The disclosures made pursuant to Rule 26(a)(1) are also considered a part of "discovery" generally. See *Medhekar v. United States Dist. Court*, 99

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 United States Mail this 23rd day of March, 2006, to Laura Ford, pro se, 3020 Port Royal Drive, Orlando, FL 32827 and Leah L. Marino, Florida Office of the Attorney General, The Capitol, Suite PL01, Tallahassee, FL 32399.

s/James J. Dean

James J. Dean

F.3d 325, 328 (9th Cir. 1996). The Court thus may stay the disclosures under Rule 26 along with the rest of discovery. If the Court grants Defendants' Motion to Stay, it will be unnecessary for the Court to address whether this action is exempt from Rule 26(a)(1).