

**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' RESPONSE TO PLAINTIFF'S
MOTION TO VACATE OR AMEND ORDER OF DISMISSAL**

Defendants Eleanor Hunter, Executive Director of the Florida Board of Bar Examiners (“Hunter”), and the Florida Board of Bar Examiners (“the Board”), respond in opposition to Plaintiff’s Motion (doc. 62) to vacate or amend this Court’s Order of Dismissal (doc. 59) and Final Judgment (doc. 60).

Plaintiff does not state whether he is seeking relief pursuant to Rule 59(e) or pursuant to Rule 60 of the Federal Rules of Civil Procedure. However, Plaintiff has failed to show entitlement to relief under either Rule.

A. To the extent that Plaintiff is seeking Relief under Rule 59(e), Plaintiff's Motion is Untimely.

Rule 59(e) provides that any motion to alter or amend a judgment “shall be filed no later than 10 days after the entry of the judgment.” In this case, the Judgment was entered on December 26, 2006 (doc. 60). Plaintiff’s motion was not filed, however, until thirteen days later, on January 8, 2007 (doc. 62). Accordingly, Plaintiff cannot rely on Rule 59(e).

B. Plaintiff is not entitled to Relief based on his contention that he did not receive the United States Magistrate’s Second Report and Recommendation.

Plaintiff’s assertion that he did not receive a copy of the Second Report and Recommendation issued by United States Magistrate Judge Sherrill in September of 2006 (doc. 55) provides no basis for relief under either Rule 59 or Rule 60, for several reasons.¹

First, Plaintiff was on notice in late September or early October of 2006 that the Second Report and Recommendation had been issued. Although Plaintiff states he did not receive a copy of the Report and Recommendation from the Clerk when it was issued, the Defendants expressly referred to the Second Report and Recommendation in a Notice of Supplemental Authority (doc. 56) that Defendants served by mail on September 26, 2006.² Accordingly, Plaintiff has waived any right to complain at this late

¹ Plaintiff asserts no other circumstance that even arguably implicates any of the subsections of Rule 60 or the substance of Rule 59(e).

² The Notice of Supplemental Authority that was mailed to Plaintiff was not returned to the undersigned as “undeliverable.”

stage (after entry of Judgment) by his failure to request a copy of the Second Report and Recommendation within a reasonable time after being notified by Defendants that it had been issued.

Second, even assuming *arguendo* that the Plaintiff did not receive the Second Report and Recommendation when it was issued, this does not provide a basis for relief under either Rule 59 or Rule 60. The Report and Recommendation merely addressed the legal issues raised by Defendants' Motion to Dismiss. Magistrate Judge Sherrill did not take any evidence or make any findings of fact. The Report and Recommendation merely addressed the legal issues relating to the viability of the Plaintiff's claims based on the allegations in the complaint.

Moreover, the Court extended the time for Plaintiff to respond to the Defendants' Motion to Dismiss - allowing the Plaintiff about two months (from April 3 until June 2) within which to file a response (doc. 40); and the Plaintiff did file a response, on June 2 (doc. 42). Thus, Plaintiff was afforded ample opportunity to raise whatever arguments he wished to make in response to the Defendant's Renewed Motion to Dismiss; and Plaintiff did, in fact, raise whatever arguments he wished to raise.

C. The Court's Order of Dismissal and Final Judgment are Correct

Plaintiff has failed to show that the Court's Order of Dismissal is incorrect. The Plaintiff's Complaint was properly dismissed; and Plaintiff's Motion to Vacate should be denied.

Respectfully submitted,

s/ James J. Dean

James J. Dean, Fla Bar No. 0832121
Sean M. Shaw, Fla Bar No. 0690988
Messer, Caparello & Self, P.A.
2618 Centennial Place
P.O. Box 15579
Tallahassee, FL 32317
(850) 222-0720
(850) 224-4359 (Fax)

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by United States
Mail this 19th day of January, 2007, to Michael J. Hason, 11815 Mayfield Ave., Apt. 103,
Brentwood, CA 90049-1750.

s/ James J. Dean

James J. Dean