

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

MICHAEL J. HASON,

Plaintiff,

v.

CASE NO. 4:06cv105-RH/WCS

FLORIDA BOARD OF BAR
EXAMINERS, et al.,

Defendants.

ORDER OF DISMISSAL

Plaintiff, a former applicant to the Florida Bar, has sued the Florida Board of Bar Examiners and its executive director. The matter is before the court on the magistrate judge's second report and recommendation (document 55), to which no objections have been filed. The report and recommendation concludes that the complaint should be dismissed. I accept the recommendation with these additional notes.

First, at page 11, the report and recommendation apparently overstates the holding in *United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877, 163 L. Ed. 2d

650 (2006). The Court held there that Title II of the Americans with Disabilities Act validly abrogates Eleventh Amendment immunity *when the conduct at issue also violates the Fourteenth Amendment*. The Court expressed no opinion on the extent to which Title II validly abrogated Eleventh Amendment immunity when the conduct at issue does not violate the Fourteenth Amendment. To the extent plaintiff's ADA claim for damages is barred by the Eleventh Amendment, this provides another basis for dismissal.

Second, the report and recommendation seems to suggest, in effect, that a mere delay in processing a bar application can never constitute a Title II violation. It plainly is correct that state bar examiners may make a full inquiry into circumstances that may affect an applicant's character and fitness to practice law. Such an inquiry may last as long as necessary. But I cannot say that unwarranted delay improperly visited upon a disabled person because of the disability can never constitute an actionable violation of the ADA. Thus, for example, if state bar examiners had a policy of taking three extra years to evaluate any applicant in a wheelchair, just because he or she was in a wheelchair, I assume an action for damages would lie (in state court, even if not, because of the Eleventh Amendment, in federal court).

Plaintiff apparently has not, however, asserted any such claim in the case at

bar. Plaintiff complains that the Board of Bar Examiners unnecessarily inquired not only into his mental health but also into such things as disputes with creditors and the manner in which plaintiff conducted himself in prior litigation. Plaintiff's beef apparently is that the Board took the time to inquire into these things at all. In short, plaintiff does not seem to allege that the Board improperly extended the time required to evaluate the things the Board evaluated; his complaint apparently is that the Board evaluated these things at all, and that doing so caused delay. That claim is properly addressed in the report and recommendation.

For the reasons set forth in the report and recommendation, as modified by these additional notes,

IT IS ORDERED:

The second report and recommendation is ACCEPTED and adopted as the opinion of the court. The clerk shall enter judgment stating, "This action is DISMISSED." The clerk shall close the file.

SO ORDERED this 22d day of December, 2006.

s/Robert L. Hinkle
Chief United States District Judge