

**IN THE UNITED STATES DISTRICT COURT FOR THE  
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.**

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**REPORT AND RECOMMENDATION**

Philip J. Stoddard filed a motion to intervene, doc. 38, and a complaint in intervention, doc. 39. Defendants have filed a memorandum in opposition to intervention, doc. 44, with exhibits, and Plaintiff filed a notice of his consent to Mr. Stoddard being permitted to intervene. Doc. 47.

Mr. Stoddard claims the right to intervene both under Rule 24(a), intervention of right, and Rule 24(b), permissive intervention. Mr. Stoddard asserts that Plaintiff claims and his own claims "have common questions of law or fact and an adverse stare decisis decision on the lawsuit would greatly impair the Intervenor's ability to press his claims." Doc. 38, p. 2. Both Plaintiff and Mr. Stoddard seek admission to The Florida Bar, and both, *inter alia*, claim that Defendants have violated their rights under the Americans with Disabilities Act (ADA).

A party seeking to intervene as of right under Rule 24(a) "must establish: (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." United States v. City of Miami, 278 F.3d 1174, 1178 (11th Cir. 2002), *quoting* Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989). Thus, to "intervene as of right under Rule 24(a)(2)," one must have "a direct, substantial and legally protectible interest in the subject matter of the action." Chiles, 865 F.2d at 1213, *cited in* Burr v. Blue Cross and Blue Shield of Florida, Inc., 153 F.R.D. 172, 175 (M.D. Fla. 1994).

Exhibit A to the memorandum in opposition is an order of dismissal in this district dated March 13, 2003, in a suit filed by Mr. Stoddard in 2002 against the Florida Supreme Court, Executive Director of the Florida Board of Bar Examiners, Kathryn Ressel, and the Chairman of the Florida Board of Bar Examiners, C. Jeffrey McInnis. Ex. A (N.D. Fla. Case No. 4:02cv106-SPM). Mr. Stoddard alleged that he sought admission to the Florida Bar. *Id.* He passed the Bar examination in February, 2000, but his application for admission to the Bar had been pending for almost three years. *Id.* Mr. Stoddard alleged he suffered from numerous "physical and mental disabilities," including having suffered with bipolar symptoms, and brought a discrimination claim under the ADA, among other claims. *Id.*

The order determined that to the degree Mr. Stoddard's complaint requested the "Court to review his state bar application proceeding," the Court was "without subject matter jurisdiction" pursuant to the Rooker-Feldman doctrine. Ex. A, p. 8. However,

Judge Mickle considered several of Mr. Stoddard's other claims. Specifically, as to the claim that certain bar admission rules were contrary to the Constitution and violated 42 U.S.C. § 1983, Judge Mickle concluded that the Florida Supreme Court and the Florida Board of Bar Examiners were "entitled to absolute immunity when engaged in regulating admittance of lawyers into the state's bar." Ex. A, p. 10 (citations omitted). Further, Mr. Stoddard's claim that the Board contravened the ADA and discriminated against him based on his mental illness and his request that the Board not be allowed to consider matters more than five years in the past or recent conduct that does not rise to a "moral turpitude standard" was rejected by Judge Mickle. He concluded that Mr. Stoddard's challenge to the Board's right to seek information concerning a bar application was "rationally related to Florida's interest in regulating the practice of law." *Id.*, at 11.

Following that dismissal, Mr. Stoddard filed an appeal with the Eleventh Circuit Court of Appeals arguing, in part, that he had standing to pursue his claims because he faced "a real and immediate threat of future injury in being denied a license to practice law." Doc. 44, ex. B, p. 27. The Court of Appeals affirmed, finding "the district court correctly dismissed this matter for lack of jurisdiction." *Id.*, at 29. The Court noted that the Florida Board of Bar Examiners served Mr. Stoddard with Specifications and requested his input as to the location and date of the formal hearing. *Id.*, at 26. Rather than proceed with the hearing where Mr. Stoddard could present evidence on his behalf to demonstrate he possessed the character and fitness required of one granted a license to practice law in the State of Florida, Mr. Stoddard responded to the Board that he would have no further dealings with the Board until his pending litigation was concluded. *Id.*, at 26. The Board then notified Mr. Stoddard that his file would "be

inactivated and held in abeyance until such time as [he elected] to proceed." *Id.* Thus, on those facts, the Court of Appeals found that because Mr. Stoddard had no bar application pending, and thus any injury was "conjectural and hypothetical, not actual and imminent." *Id.*, at 29. Accordingly, Mr. Stoddard's claims were deemed "not ripe" and he lacked standing to pursue the action. *Id.*

Defendants contend that Mr. Stoddard's motion to intervene should be denied on timeliness grounds. They note that the original complaint in this case has been pending since August, 2005. Doc. 44, p. 16. The motion to intervene was filed nine months after case initiation on May 30, 2006. Doc. 38.

With regard to the timeliness of the motion, the only prejudice might be delay in ruling on Defendants' pending motion to dismiss. It appears from the "Joint Conference Report," doc. 27, filed in the Southern District prior to transfer, that the parties have not even begun discovery yet. Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (finding no prejudice by intervention where there was no "substantial action" in the case as the motion to intervene was "filed only seven months after Senator Chiles filed his original complaint, three months after the government filed its motion to dismiss, and before any discovery had begun."). Because Rule 24 does not impose an explicit timeliness measure, this consideration is discretionary. See Georgia v. U.S. Army Corps of Engineers, 302 F.3d 1242, 1259 (11th Cir. 2002) (noting that "[t]he requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice."), *quoting* McDonald v. E.J. Lavino Co., 430 F.2d 1065, 1074 (5th Cir. 1970). Defendants' timeliness argument is not persuasive.

However, intervention as of right pursuant to Rule 24(a) has not been shown. Mr. Stoddard seeks his own admission to The Florida Bar, an interest separate from Plaintiff's interest. Likewise, Plaintiff shares no legally protected or enforceable interest in Mr. Stoddard's admission to The Florida Bar. Each interest is separate and distinct from the other. Mr. Stoddard has not met one of the long-standing requirements for an application to intervene, that the applicant "have an interest relating to the property or transaction which is the subject of the action." Athens Lumber Co., Inc. v. Federal Election Com'n, 690 F.2d 1364, 1366 (11th Cir. 1982). Mr. Stoddard lacks an "interest in the transaction which is the subject of the proceeding." Athens Lumber Co., 690 F.2d at 1366. Further, Mr. Stoddard will not be impaired or impeded from pursuing his own litigation, regardless of the result of this case. Denying the motion to intervene will not prejudice Mr. Stoddard should he decide to initiate his own suit.

Permissive intervention pursuant to Rule 24(b) should not be granted either. Mr. Stoddard's claims lack sufficient commonality of law or fact with Plaintiff's claims. Their bar applications are distinct, turning upon facts and the application of law to facts unique to each.

Accordingly, it is **RECOMMENDED** that Mr. Stoddard's motion to intervene, doc. 38, be **DENIED**.

**IN CHAMBERS** at Tallahassee, Florida, on August 31, 2006.

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.**