

ORIGINAL

Philip J. Stoddard, Intervenor, pro se  
248 Shores Boulevard  
St. Augustine, FL 32086  
(904)797-5380

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT  
OF FLORIDA**

**MICHAEL J. HASON,**

**Plaintiff,**

**Vs.**

**Case No. 4:06cv105-RH/WCS**

**MOTION TO INTERVENE**

**THE FLORIDA BOARD OF  
BAR EXAMINERS, et al.,**

**Defendants.**

**PHILIP J. STODDARD'S MOTION TO INTERVENE**

PHILIP J. STODDARD, pro se, files this motion to intervene and assert claims for damages and general injunctive relief as a party plaintiff pursuant to Fed. R. Civ. P. 24(a) and in the alternative Fed. R. Civ. P. 24(b).

**INTRODUCTION**

1. Plaintiff, MICHAEL J. HASON, pro se, sued the defendants in this case for damages and injunctive relief arising out of alleged violations of Title II of the Americans with Disabilities Act (Title II) 42 U.S.C., Plaintiff originally filed the suit in the United States District Court for the Southern District of Florida. This case was transferred to this district on or about February 27, 2006.

OFFICE OF CLERK  
U.S. DISTRICT CT  
NORTHERN DIST. FLA.  
TALLAHASSEE, FLA.

06 MAY 30 AM 9:00

JK

FILED

JURISDICTION

2. The Court has jurisdiction of the Intervenor's claims pursuant to 28 U.S.C. § 1331 because all of the Intervenor's claims arise under the Constitution and Statutes of the United States.

ARGUMENT AND AUTHORITIES

3. The Court should grant intervenor, PHILIP J. STODDARD'S, motion to intervene as of right because intervenor's claims and the lawsuit 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. Stone vs. First Union, 371 F3d 1305 (11th Circ 2004) is directly on point and controlling authority (District Court denial of motion to intervene as of right reversed because an adverse stare decisis ruling on the lawsuit would impair the intervenors' ability to litigate their related claims.)

4. Both parties are generally alleging that the Florida Board of Bar Examiners and its staff have harmed them by violating Title II of the Americans with Disabilities Act by stonewalling their bar applications with frivolous investigations, harassment, and by pursuing unconstitutionally vague and subjective "charges." Thus, the overarching issue in this case is whether a Bar applicant has an available remedy for due process violations during the pendency of his application and before the Supreme Court has ultimately ruled on the FBBE recommendation.

5. Granting the motion will not result in undue delay because the movant is restricting his claims to the various actions for damages and only a general claim for appropriate injunctive relief.

6. Granting the motion will not prejudice the parties because the plaintiff will have the benefit of the Intervenor's considerable research library on the important issues in the case and because the defendants, by a long history of defending against suits by aggrieved bar applicants, have obviously acquired a similar library.

7. The motion is timely because Intervenor discovered the pendency of the suit on or about May 25, 2006 while searching the Court's database for pending litigation concerning the Florida Board of Bar Examiners. Intervenor has, for some time considered filing a suit for damages and for injunctive relief against these defendants and has forborn from doing so because his application for bar admission remains pending before the defendants.

8. Upon discovering the pendency of this suit the movant immediately reviewed defendants' pending "Motion to Dismiss" and realized that his future claim against the defendants would necessarily be prejudiced should the Court decide the motion to dismiss in the defendants' favor and the plaintiff fails to appeal or loses on appeal. Further, by asserting 11th amendment immunity against Dr. Hason's claims, defendants are implicitly arguing that Tennessee vs. Lane, 541 U.S. 509 (2004) does not apply to state licensing boards. While the holding in Lane is limited to the facts in that case, the broader "open question" of whether abrogation of Sovereign immunity pursuant to Title II was valid under the Fourteenth Amendment is settled. The issue of whether the holding in Lane extends to intangible barriers such as arbitrary and discriminatory qualification barriers raised against Title II protected individuals in attorney licensing cases is definitely "on the table" in this case and requires a studied opinion by the Court. The movant is prepared to brief and present argument on that issue.

9. Dr. Hason's complaint shows facts sufficient for a colorable claim to relief under the law as it presently exists after Tennessee vs. Lane, and Exxon Mobil Corp. vs. Saudi Basic Industries Corp., 544 U.S. 280 (2005) (Rooker-Feldman doctrine to be applied only to "State Court Losers"). The Exxon case is controlling authority on the application of Rooker-Feldman in every jurisdiction in the United States - the defendants have not disclosed that case to the court or explained why they are arguing in the face of clearly established law. Since Dr. Hason is an extremely busy practicing physician physically located in California (as shown by his recent motions to extend the time for filing his opposition to the Motion to Dismiss), and "pro-se" in this case, there is at least a possibility that Dr. Hason will not have time to research and brief all of the important issues to be decided. The Intervenor is conveniently located in Florida and his research is complete and up-to-date.

10. Intervenor further observes that the defendants, while citing to the unpublished, non-precedential opinion in Stoddard vs. Supreme Court, No. 03-11662 (11th Circ. 2003) fail to distinguish that case from a Tenth Circuit published decision directly on point: Roe No. 2 v. Ogden, 253 F.3d 1225 (10th Cir. 2001) (a person who is qualified or in the process of qualifying to apply for a license has standing to attack the licensing rules whether or not he has actually applied for the license). The intervenor has a genuine interest in the standing issue because, at the time he files his claim for declaratory and injunctive relief, he will very likely be sitting out a two year ineligibility period imposed by the defendants rules.

#### CONCLUSION

11. This Court should grant the relief requested because it appears that:

- (a) there are common issues of fact or law;

(b) the motion is timely because the movant is filing it within a few days after he discovered his interest in the case;

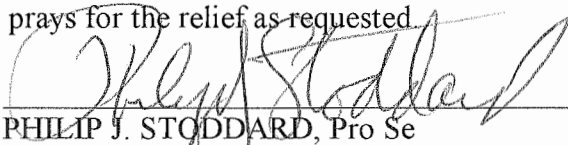
(c) the case has not yet progressed past the pre-trial dispositive motion phase - neither the plaintiff nor the defendants can claim any prejudice arising out of an intervention;

(d) the defendants' anticipated arguments opposing the intervention and to be presented in the anticipated motion to dismiss the intervenor's complaint will raise unsettled issues of law in the Eleventh Circuit in light of recent Supreme Court and sister circuit decisions and the intervenor is well prepared to meet those arguments;

(e) the interest of judicial economy favors hearing all of the issues common to the plaintiff and intervenor in a single action;

(f) the issues raised by the pleadings are of national concern. To avoid a multiplicity of suits, the court has an interest in assuring that all genuinely interested parties asserting their right to be heard on these issues are properly in court at the same time.

WHEREFORE, the Intevenor prays for the relief as requested.

  
PHILIP J. STODDARD, Pro Se  
248 Shores Boulevard  
St. Augustine, FL 32086  
(904)797-5380  
FAX (904)797-5380

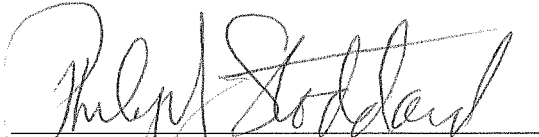
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to:

Michael J. Hason, M.D.  
11815 Mayfield Ave., #103  
Brentwood, CA 90049

James J. Dean, Esq.  
Messer Caparello & Self, P.A.  
P.O. Box 1876  
Tallahassee, FL 32302-1876

on this 30th day of May, 2006.

  
Philip J. Stoddard