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

PHILIP J. STODDARD,

Plaintiff,

v. **Case No.: 4:06cv414 RH-WCS**

THE FLORIDA BOARD OF BAR EXAMINERS, an administrative agency of the State of Florida, et. al.,

Defendants.
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PLAINTIFF'S MOTION FOR REHEARING

Plaintiff, PHILIP J. STODDARD, moves the Court for relief pursuant to Rule 59, Federal Rules of Civil Procedure. The Court has jurisdiction of the case and, under the present circumstances, dismissal of the lawsuit is premature: the record is needful of further development. Any shortcomings in the Complaint can be cured by supplement and amendment. As support for granting the motion, Plaintiff shows the following:

I. FACTS

On December 12, 2006, Defendant Florida Board of Bar Examiners issued its Findings of Fact and Conclusions of Law in Plaintiff's case (Exhibit A). The Court's Order demonstrates its general understanding of the facts of the case to date but Plaintiff points out that the factual recitation on page 4 of the Order relates to facts that were more than five years in the past at the time Plaintiff originally filed the suit in March, 2002. Plaintiff also notes that, although Plaintiff

disclosed a history of mental illness, neither the Specifications nor the Findings of Fact and Conclusions of Law mentions such a consideration. Only the hearing transcripts disclose the Board's considerable (and allegedly violative of the ADA) interest in this topic, especially the transcript of the September 15, 2006, formal hearing.

However, the Board has refused to supply a copy of the September 15, 2006, hearing transcript to Plaintiff's attorney (Exhibit B) unless Plaintiff pays an *additional* fee of $2,821.00. The applicable rule is as follows:[1]

> 1-63 Release of Information. The Board is authorized to disclose information relating to an individual registrant, applicant or member of The Florida Bar, absent specific instructions from the Court to the contrary, in the following situations:
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> . . . .
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> 1-63.5 Documents Filed by Registrant or Applicant. Upon written request from registrants or applicants for copies of documents previously filed by them, and *copies of any documents or exhibits formally introduced into the record at an investigative or formal hearing before the Board and the transcript of such hearings*. Cost of copies are set out below:
>
> (a) each request for a copy of any document or portion of a document shall be accompanied by a fee of $25.00 for the first page and $.50 for each additional page.

Fla. Bar Admiss. Rules 1-63, 1-63.5 (emphasis added).

The Complaint shows that the Board and individual Defendants discriminated against Plaintiff by characterizing harmless, innocent and even constitutionally protected conduct (free speech in a pro se litigation context and remarks in private correspondence) as a proxy for

[1] The Board references Fla. Bar Admiss. Rule 3-23.8. "3-23.8 Formal Transcript Cost. The cost of a transcript reasonably required by the Board in the conduct of investigative or adjudicative functions shall be paid by such applicant or registrant." Whether the transcript (or the hearing) was reasonably required is an issue in this litigation.

invidious discrimination and arbitrary denial of character certification on a bare suspicion of past mental illness[2]. While the Court points out that Plaintiff has suffered through hard times, Plaintiff shows that Defendants have failed to prove any conduct which rationally relates to current fitness for law practice or which justifies several years of investigation and "further inquiry."

At the very time he received the Order of Dismissal, Plaintiff's attorney was in the process of drafting a Supplemental Complaint based on matters discovered in the Findings of Fact and Conclusions of Law. Unfortunately, the Court did not have the benefit of this important document on the record at the time it reviewed the Motions to Dismiss and Plaintiff's response to those Motions. Nor did the Court have the benefit of a copy of the transcript of Plaintiff's formal hearing which, as previously noted, the Board refuses to produce in lieu of an additional payment by Plaintiff of $2,821.00.

Further, a Supplemental Complaint would allege that, as present and discoverable evidence would show, the Board has an unpublished policy whereby they require applicants whom they suspect may have a mental illness or abnormal condition to receive an evaluation from an approved mental health professional chosen from a list supplied by the Board. Oddly, however, under this unpublished policy, persons like Plaintiff who report a history of mental illness are *not required* to undergo any such evaluation. Plaintiff asserts this policy was adopted

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[2] The alleged "red flag" that triggered the several years of "further inquiry." Courts have observed that 28 C.F.R. § 35.130(b)(8) restricts a public entity from imposing or applying "eligibility criteria that screen out an individual with a disability . . . from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. Ellen S. vs. Florida Board of Bar Examiners, 859 F.Supp. 1489, 1493 (S.D. Fla. 1994) (citing Medical Society of New Jersey vs. Jacobs, 1993 U.S.Dist. LEXIS 14294 (D. N.J. 1993).

because it was recognized that a mental health evaluation may actually provide exculpatory and mitigating evidence that would benefit an applicant by reporting that "red flag" behavior was symptomatic of a mental condition which has since been cured or controlled. Thus, by not requiring an ADA-protected applicant to be evaluated, the Board has greater latitude to discriminate against the applicant by investigating and considering "red flag" incidents in isolation from any ADA-protected, causal mental illness.

The Court entered its Order dismissing Plaintiff's claims for damages with prejudice while correctly determining that Defendants, sued in their individual capacities under 42 U.S.C. § 1983, are entitled to claim the protection of qualified immunity for any alleged misconduct, excepting the alleged ADA violations. However, such "qualified immunity" dismissals involve mixed questions of fact and law, including questions involving the subjective motivation(s) of defendants. These questions are more appropriately resolved on a Fed. R. Civ. P., Rule 56 motion after discovery.

II. MEMORANDUM OF LAW

A. EXCEPT FOR THE LACK OF JUDICIAL ACTION, THE FACTS OF THE CASE ARE SUBSTANTIALLY ANALOGOUS TO THOSE PRESENTED TO THE U.S. SUPREME COURT IN SCHWARE.

Except for judicial involvement[3], the case is factually[4] and procedurally[5] on all fours with Rudolph Schware vs. Board of Bar Examiners of the State of New Mexico, 291 P.2d 607 (N.M. 1955)[6]; reversed by Schware v. New Mexico Board of Bar Examiners, 353 U.S. 232 (1957).

In reversing New Mexico, the U.S. Supreme Court laid down the rule which is supposed to guide bar admissions and all state licensing authorities in processing professional licensing applications. The rule is stated thus:

> A State cannot exclude a person from the practice of law or from any other occupation *in a manner* or for reasons that contravene the *Due Process* or Equal Protection Clause of the Fourteenth Amendment.*fn5 Dent v. West Virginia, 129 U.S. 114. Cf. Slochower v. Board of Education, 350 U.S. 551; Wieman v. Updegraff, 344 U.S. 183. And see Ex parte Secombe, 19 How. 9, 13. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but *any qualification must have a rational connection with the applicant's fitness or capacity to practice law*. Douglas v. Noble, 261 U.S. 165; Cummings v. Missouri, 4 Wall. 277, 319-320. Cf. Nebbia v. New York, 291 U.S. 502.

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[3] The decision in Schware from which the appellant sought U.S. Supreme Court review was on a judicial writ of certiorari. Apparently, Florida's practice of issuing bar admission denials on judicially unreviewable summary administrative orders insulates those orders from U.S. Supreme Court review because of the absence of a judicial record. The Florida Supreme Court has not issued a judicial decision in a bar admission case in more than 50 years (not since Coleman vs. Watts, 81 So.2nd 650 (1955)). Florida amended its constitution shortly thereafter. Judicial review of attorney regulation and admission matters has not been available since the time of that amendment.

[4] The objections to Schware's character evidence were based on entirely past conduct involving neither acts of moral turpitude nor criminal convictions.

[5] The New Mexico Board issued a vague conclusory statement purporting that the applicant "failed to prove good moral character."

[6] Schware's argument before the New Mexico Supreme Court was entirely based in Art. I, Sec. 10 Const. U.S., as interpreted in Ex Parte Garland, 71 U.S. 333 (1867) and Cummings vs. Missouri, 71 U.S. 277 (1867).

Schware, 353 U.S. at 238-239 (emphasis added)[7].

Florida's present theory, policies and practices related to moral character determinations in attorney licensing proceedings have been rejected as *unconstitutional for more than 50 years*.

B. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOW THAT CHARACTER AND FITNESS HEARINGS BEFORE THE FLORIDA BOARD OF BAR EXAMINERS ARE NOT "JUDICIAL INQUIRIES."

The Findings of Fact and Conclusions of Law raise an important issue as to whether proceedings before the Florida Board of Bar Examiners under the Rules as they are being generally and universally applied are in the nature of a "judicial inquiry." The "judicial inquiry" characterization clearly applies to bar disciplinary proceedings where the proceedings are commenced by filing charges referencing discrete rules and objectively determinable conduct

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[7] This statement by the Court explicitly rejects New Mexico's "subjective moral character determination" theory as expressed by the Supreme Court of New Mexico in the following statement excerpted from the underlying case:

> Thus we are brought up to the controverted, substantial question before us of whether the petitioner has produced proof of his good moral character so as to entitle him to take the examination for membership in the bar of this state, as contended by him under his second point.
>
> An examination of this sort is *concerned ultimately with the subjective character* of the individual. Character cannot be laid upon a table, so we must resort to two kinds of indirect evidence: First, *the pattern of conduct an individual follows*, and, second, a *consideration of the regard his fellows and associates have for him*. This investigatory technique can, at best, but dimly throw into relief the architecture of character; still, it is all we have.

Rudolph Schware, 291 P.2d at 609 (emphasis added).

This case generally describes Florida's present approach.

standards ("laws supposedly already in existence") and alleged past offenses of those rules. Bar admission proceedings, as the Specifications (Doc. 31, Exhibit 1) and the Findings of Fact and Conclusions of Law (Exhibit A, hereto) show, under current Florida practice and procedure, are entirely subjective. Such arbitrariness as is exhibited in the relevant documents in the record does not support the notion that Florida Board of Bar Examiners are acting "judicially" while investigating and determining "character and fitness" issues. Besides the impact on the Younger abstention problem, there are other closely related reasons for revisiting the issues.

C. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW LEND CREDIBLE SUPPORT TO PLAINTIFF'S DISCRIMINATION CLAIMS.

The allegations of the Complaint, taken as true for purposes of ruling on the Motions to Dismiss, establish Plaintiff's status as a qualified person with a disability who is being unlawfully discriminated against by state licensing authorities, institutionally and individually. Since Title II of the ADA provides for the same remedies as are available under Sec. 504 of the Rehabilitation Act. There is material in the bar application record suggesting retaliatory animus. Damages against individual defendants using the licensing procedure as a vehicle for retaliation are available under 42 U.S.C. § 12203. The Court should make itself aware of that material before it rules on whether the Complaint states a cause of action against individual Defendants under Title II.

D. LAWRENCE V. SCHWIEP, EVEN IF CORRECTLY DECIDED, IS INAPPOSITE BECAUSE THERE IS NO ONGOING STATE JUDICIAL OR QUASI-JUDICIAL PROCEEDING.

The claims for injunctive relief were dismissed without prejudice based on this Court's prior decision in Lawrence v. Schwiep, No. 4:05cv14-RH (N.D. Fla. Oct. 7, 2005) (unpublished order of dismissal), aff'd sub nom. Lawrence v. Rigsby, No. 05-16011, 06-10776, 2006 WL

2690232 (11th Cir. Sept. 21, 2006). That case is inapposite because Plaintiff has waived Supreme Court review (Exhibit C), has voluntarily terminated the character and fitness qualification process and there are no pending judicial proceedings. Under the circumstances disclosed herein, this Court need not abstain under Younger because the Complaint can be supplemented and amended to eliminate the Younger issue and it would be wasteful and unjust to force Plaintiff to refile the suit.

This Court most assuredly has jurisdiction of Plaintiff's constitutional challenges to Florida's general rules and procedures governing admission to the bar. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 485-486 (1982); Dale v. Moore, 121 F.3d 624 (11th Cir. 1997), citing Kirkpatrick v. Shaw, 70 F.3d 100, 102 (11th Cir.1995)[8] ("The district court correctly determined that it had subject matter jurisdiction . . . over [plaintiff's] facial challenge to the constitutionality of Florida's general rules and procedures governing admission to the bar.). "Younger principles aside, a litigant is entitled to resort to a federal forum in seeking redress under 42 U.S.C. § 1983 for an alleged deprivation of federal rights." Wooley v. Maynard, 430 U.S. 705, 710 (1977) (citing Huffman v. Pursue, Ltd., 420 U.S. 592, 609-6 10, n. 21(1975)).

E. THE CHARACTER OF THE BOARD'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AMPLY DEMONSTRATES THAT SEEKING A STATE REMEDY FOR THE ARBITRARY DENIAL WOULD BE FUTILE.

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[8] These cases stand for the proposition that Younger abstention is not a proper replacement for the now extinct view that the Rooker-Feldman doctrine applies to recommendations of state bar admissions authorities. See also Exxon Mobil v. Saudi Basic Industries, 544 U.S. 280 (2005).

The Court should carefully consider the substance (and lack thereof) of the Board's Findings of Fact and Conclusions of Law with particular attention to the tortured characterizations of innocent conduct, to the time of the purported "misconduct," the strained derogatory inferences, lurid descriptions of long past purported evildoing, the purely subjective opinions and *supplementary accusations* and to the severity of the punishment recommended and administratively imposed. The document evidences Board and individual Defendant conduct that cannot be said to be *judicial in nature* because the Board does not have any law which permits a finding of bad moral character based on a "kitchen sink" history of long past non-criminal misconduct or an inappropriate lifestyle.

With this in mind, it clearly appears that the review by the Florida Supreme Court, available to a frustrated applicant pursuant to Fla. Bar Admiss. Rule 3-40 is not judicial, but is instead "ministerial," quasi-legislative or executive in nature. See Feldman, 460 U.S. at 477. The Florida Supreme Court cannot properly review a purely subjective and, therefore, arbitrary recommendation by its own agency.[9] Findings of Fact and Conclusions of Law issued by the Florida Board of Bar Examiners are, functionally, proposed rules or policies. As such they are

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[9] "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. Feldman, at 476-477, citing Prentis v. Atlantic Coastline Co., 211 U.S. 210 (1908).

legislative in nature. For the convenience of the parties, two recent final orders of the Supreme Court are attached (Exhibits D and E)[10].

F. ABSENT RECENT OR PRESENT OBJECTIVELY DETERMINABLE EVIDENCE OF UNFITNESS FOR LAW PRACTICE, THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SATISFY THE REQUIREMENTS FOR A "VERDICT OF ATTAINDER."

In neither the Specifications nor the Findings of Fact and Conclusions of Law are there suggestions of present illegal or even antisocial behavior or any allegations showing that Plaintiff could have altered or presently can alter any course of conduct to avoid the penalty of disqualification. Coupled with the Board's apparently amorphous interpretations of unpublished standards and subjective conclusions, the documents are hallmarks of unlawful conduct under a bill of attainder. See Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 88 (1961)[11] (Regulatory measures apply prospectively.).

G. PLAINTIFF HAS PRESENTED A PLAUSIBLE CASE FOR THE PROPOSITION THAT THE FLORIDA BOARD OF BAR EXAMINERS IS VIOLATING FEDERAL LAW AS A MATTER OF POLICY AND PRACTICE.

Every bar applicant who has completed the required education and who has passed the bar examination, submitted an application with the requisite references and who shows that he or

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[10] In these orders, not only does the Florida Supreme Court neglect to disclose what law the Board applied, it even fails to disclose the basis for its jurisdiction.

[11] "Legislatures may act to curb behavior which they regard as harmful to the public welfare, whether that conduct is found to be engaged in by many persons or by one. So long as the incidence of legislation is such that the persons who engage in the regulated conduct, be they many or few, can escape regulation merely by altering the course of their own present activities, there can be no complaint of an attainder." 367 U.S. at 88.

she has never been judicially convicted of a serious crime presents a prima facie case for good moral character. Under the American system of government, a citizen is presumed innocent unless proven guilty by a judicial trial. Through a series of cases stretching back to Calder v. Bull, 3 U.S. 386 (1798), the Florida Board of Bar Examiners, the Supreme Court of Florida and every bar licensing authority under American Law has been given notice that excluding a person from practicing a profession is punishment; that such punishment may not be lawfully imposed as an exercise of "police power" without concrete objective evidence of unfitness; and that mere accusations unsupported by judicial findings of guilt or recent reliable evidence of serious misconduct cannot support such punishment. Fundamentally, Defendants in this case are all on notice that the Law is clearly established. Bar admission authorities may not use bar licensing proceedings as vehicles for invidious discrimination, political reprisals, suppression of lawful dissent, proxies for grudge holding incumbent bar members and other ulterior purposes.

The overarching issue in this case is whether the Board members and staff are violating the Due Process Clause, the Bill of Attainder Clause and Title II of the ADA (all clearly established law) as a matter of practice and policy under color of secret rules, policies and character standards. Arguably, consideration of the Findings of Fact and Conclusions of Law and the transcript of the September 15, 2006, formal hearing might change this Court's view.

Because the disqualification is a restraint on First Amendment activity (a form of "probation"), under the Rules of the Supreme Court Relating to Admissions to the Bar Plaintiff has standing to prospectively challenge the legality of the disqualification and need not seek

relief in state court. Patsy v. Board of Regents of the State of Florida, 457 U.S. 496 (1982). For an administrative agency to assume the authority to burden an applicant for professional licensing with felony collateral consequences in the absence of judicial action raises grave constitutional concerns.

Arguably, the five year disqualification is pursuant to unconstitutional application of a facially constitutional rule. Under the facts pled in the complaint and as corroborated by the Findings of Fact and Conclusions of Law (Exhibit A), the administrative disqualification from bar licensing is intended to be punishment for past behavior not related to the practice of law. When the Plaintiff shows evidence of punitive intent, the regulatory "prophylactic exception" rationale of Hawker v. New York, 170 U.S. 189 (1898) is not a defense against a charge that the state and its responsible officials have violated Art. I, Sec. 10, Const. U.S. SBC Communications, Inc. et. al. vs. FCC, et. al., 154 F.3d 226, 235-236 (5th Circ. 1998) (Punitive intent is a necessary element of a Bill of Attainder claim.) Equitable relief is appropriate where "bad faith, harassment, or any other unusual circumstance" is shown to exist. Younger, 401 U.S. at 54. The allegations of the Complaint show willful violation of clearly established federal law.

H. PLAINTIFF DOES NOT HAVE AN ADEQUATE STATE REMEDY BECAUSE THE BOARD HAS SUPPLEMENTED THE SPECIFICATIONS IT PURPORTEDLY "TRIED" AT THE FORMAL HEARING WITH NEW ACCUSATIONS BASED ON EVIDENCE IT GATHERED AT THAT HEARING AND CANNOT PROVIDE HIM WITH A FAIR PROCEEDING IN WHICH TO REBUT THOSE ACCUSATIONS.

A copy of the Waiver filed in Plaintiff's bar application proceeding is attached (Exhibit C). Neither the Supreme Court of Florida nor the Florida Board of Bar Examiners is institutionally competent to entertain a challenge to the Findings of Fact and Conclusions of Law. See Gibson v. Berryhill, 411 U.S. 564, 575-77 (1973)[12]. Not only do the Findings fail to apply existing law to the facts found[13], the Board has charged and purportedly convicted Plaintiff with further "adverse matters," including a felony (unauthorized law practice), of which allegations he had no notice prior to the hearing and no opportunity to rebut. It also appears that the Board used material that was not made part of the hearing record in its questioning and in its conclusion. These are manifest Due Process violations. Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963).

I. THE COURT DOES NOT HAVE JUDICIAL NOTICE OF THE BOARD'S UNPROMULGATED RULES AND POLICIES UNDER WHICH IT ADMINISTERS THE FLORIDA BAR ADMISSION PROCESS.

This Court has judicial notice of the Rules of the Supreme Court Relating to Admissions to the Bar as recited in its decision in Lawrence v. Schwiep. On the face of these rules, it appears that Florida's bar admission proceedings and the hearings contemplated satisfy the demands of Due Process. However, the Court does not have judicial notice of how the Board is

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[12] The prospective "hearing officers" are all actual or potential defendants in the pending action for damages.

[13] The formal hearing in Plaintiff's case falls short of the definition of "judicial inquiry" because the Board made a subjective determination as opposed to applying existing law to a present or past set of facts.

applying these rules or the universally applicable unpublished rules, policies and procedures which are amenable to challenge in suits for declaratory and injunctive relief on Due Process grounds.

That the rules, as applied and augmented by secret, highly subjective, unpromulgated and allegedly unconstitutional or illegal rules and policies may offend Due Process must be obvious. Such rules can be prospectively challenged on constitutional grounds in District Court. Feldman, 460 U.S. 462 (1982).

If Plaintiff can prove that any of the individual officials purposefully concocted the challenged "collectively disqualifying adverse matters" standard as a proxy for discrimination against ADA protected bar applicants, these Defendants can be sued in their official capacities for damages for the Due Process violations[14] under 42 U.S.C. § 1983 even if the ADA damage claims technically fail. The damages claims are more properly evaluated on a Motion for Summary Judgment brought under Rule 56, Fed. R. Civ. P., after discovery and appropriate amendment and supplementation to conform to the discovery. Saucier v. Katz, 533 U.S. 194, 201 (2001).

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[14] The Eleventh Circuit reviews the appropriateness of granting the "qualified immunity" defense at the Rule 12(b) stage under the highly deferential "Saucier" standard. Haire v. Thomas, 2006 U.S. App. LEXIS 27608 (11th Circ. Nov. 8, 2006). Under that standard, once a plaintiff has alleged the violation of a constitutional right, the issue of whether the right was sufficiently established by existing law is more properly resolved at the Rule 56 stage of the action. Saucier v. Katz, 533 U.S. 194, 201 (2001) ("[I]f a violation could be made out on a favorable view of the parties submissions, the next, sequential step is whether the right was clearly established. This inquiry must be undertaken in light of the case's specific context, not as a broad general proposition)(emphasis added).

The individual Defendants have yet to prove that they acted within the scope of their legitimate discretion by formulating and unlawfully adopting a "kitchen sink" character standard, applying it against Plaintiff and other ADA protected applicants and imposing administrative punishment pursuant to application of the standard. Art. I, Sec. 10, Const. U.S. has been clearly established law since 1787. A willful violation of a fundamental right (freedom from legislative punishment) on its face violates the Fourteenth Amendment. The Complaint states claims for damages under Sec. 1983 against the individual Defendants and against the Board under Title II.

III. CONCLUSION

The first prong of Younger (that there be an ongoing state proceeding) is not satisfied in light of recent developments in this case. The Findings of Fact and Conclusions of Law are devoid of substance or legal underpinnings while brimming over with purple prose and lurid accusations, demonstrating applicability of the Younger "Bad Faith" exception. Younger, 401 U.S. at 54 (noting that a "showing of bad faith, harassment, or any other unusual circumstance [] would call for equitable relief").

More importantly, the document (Exhibit A) exposes the "formal hearing" under Fla. Bar Admiss. Rule 3-23 for what it is not. Character and fitness inquiries in Florida are "executive" *quasi-legislative* and not "judicial" inquiries. Where lawyer regulation is concerned, Younger only relates to proceedings involving attorney discipline. It only protects proceedings, initiated by the filing of a complaint, in which the state is seeking to enforce the Rules Regulating the

Florida Bar as interpreted by the Supreme Court in published "Standards for Imposing Attorney Sanctions." These rules and standards have nothing to do with bar *applicants*. Even if it could be argued that Plaintiff has been "convicted" of the "adverse matters" alleged in the Specifications, this Court would err by dismissing the rule challenges set forth in the Complaint. See Wooley, 430 U.S. 705 (1977); Feldman, 460 U.S. 462 (1982).

The Complaint alleges that the Supreme Court is issuing arbitrary character standards to the Florida Board of Bar Examiners in the form of unpublished administrative opinions that are not based in any existing law or precedent. The Findings of Fact and Conclusions of Law demonstrate a secret delegation of authority to the Florida Board of Bar Examiners for proposing arbitrary and unlawful character standards in what is purposefully designed to give the *appearance* of Due Process. The Court errs where it views this kind of "adjudicative rulemaking" activity as a fair and adequate opportunity for litigation of federal claims.

WHEREFORE, Plaintiff prays for relief from the judgment and for orders of this Court permitting him reasonable time to amend and supplement the Complaint and to engage in limited discovery.

Respectfully submitted,

S/Jeffrey H. Northcutt
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 8th day of January, 2006, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, and notice of electronic filing to: JAMES J. DEAN, ESQ., Post Office Box 15579, Tallahassee, Florida 32317 and STEPHANIE A. DANIEL, ESQ., Florida Office of the Attorney General, The Capitol, Suite PL01, Tallahassee, Florida 32399-1050.

S/Jeffrey H. Northcutt
JEFFREY H. NORTHCUTT