

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

E. STEPHEN DEAN

Plaintiff,

v.

THE MISSISSIPPI BOARD OF BAR ADMISSIONS; JAMES R. MOZINGO, in his official capacity, as Chairman of the MISSISSIPPI BOARD OF BAR ADMISSIONS and in his individual capacity; and the following agents of the MISSISSIPPI BOARD OF BAR ADMISSIONS in their official capacities and individual capacities: LAWRENCE C. GUNN, JR.; CRAIG M. GENO; MILDRED JUANITA LESURE; PAUL M. LUCKETT; JENNIFER F. NICAUD; JEFFREY G. PIERCE; E. BARNEY ROBINSON, III; JEFFREY A. STYRES; PIETER TEEUWISSEN; CLYDE H. GUNN, III; H. HUNTER TWIFORD, III; JAY PAUL CARMEAN; KAREN K. SAWYER; MICHAEL C. BAREFIELD; KAY L. TRAPP; and JOHN DOE.

Defendants.

E. Stephen Dean
212 South Main Street
Piedmont, MO 63957
(573) 429-4192

COMPLAINT

CIVIL NO. 2:06 cv 46 LTS RHW

JURY TRIAL DEMAND

COMPLAINT

COMES NOW Plaintiff, Earl Stephen Dean ("the Plaintiff"), who complains and alleges as follows:

INTRODUCTION

1. This is an action for injunctive and declaratory relief, and compensatory monetary damages, under the Americans with Disabilities Act, 42 U.S.C. § 12 101 *et. seq.* ("ADA") and the Civil Rights Act of 1871, 42 U.S.C. § 1983 ("Section 1983").

This complaint is brought on behalf of a law school graduate and applicant for a license to practice law in the State of Mississippi. Plaintiff challenges:

- (1) the Defendants' general rules, decisions, and inquiries that require him to submit to a mental health evaluation conducted by non-medical personnel, without any medical expertise or certification;
- (2) the Board's custom, policy and practice of evaluating and determining applicants' mental health in the absence of any medical documentation or qualified medical opinion whatsoever. These general rules permit the Board (Defendants) to make inquiries, then assessments based on those inquiries, of the applicant's present state of mental health. The general rules then permit the Defendants to deny a license to practice law to any applicant whom they have determined to be mentally or emotionally unstable;
- (3) the general practice contending that criticizing the Defendants and/or its members, constitutes evidence per se of the applicant's mental and emotional instability, therefore allowing Defendants to deny applicant's request for a license to practice law; and
- (4) the general rule that Defendants may conduct mental examinations of applicants then, based upon their determination alone, adjudicate applicants as being mentally and emotionally unstable without first seeking and receiving a

medically acceptable medical evaluation or opinion pertaining to the applicant from a qualified, licensed psychiatrist or psychologist.

Plaintiff contends that these general rules and universal inquiries violate the ADA's prohibition of discrimination against individuals by public entities that regard the individuals as having a disability where the discrimination occurs on the basis of the regarded disability. Plaintiff also contends that the Defendants' action is so clearly violative of established law and so clearly violates his constitutional rights that he is entitled to money damages under Section 1983 for violation of his civil rights.

JURISDICTION AND VENUE

2. Jurisdiction of the federal court exists pursuant to 28 U.S.C. § 1331, because this is a civil action arising under the laws and Constitution of the United States and under 28 U.S.C. § 1343, because the Plaintiff is seeking redress for the deprivation, under color of State law, statute, ordinance, regulation, custom, or usage, of his rights, privileges or immunities secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens. This action involves a violation of federal laws pursuant to 42 U.S.C. §§ 1983 and 12101 *et. seq.* and a violation of the Fifth and Fourteenth Amendments to the United States Constitution.

3. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §1391, because at least one of the Defendants resides in the District and because the unlawful acts and violations of the law complained of have been conceived of, carried out, made effective, and performed in major part in this District.

PARTIES

4. Plaintiff Earl Stephen Dean, is a resident of Piedmont, Missouri. He holds the degree of *Juris Doctor* from the Thomas M. Cooley Law School of Lansing, Michigan and has applied for a license to practice law in Mississippi.

5. The MISSISSIPPI BOARD OF BAR ADMISSIONS (Board) was created by the Mississippi Legislature by virtue of Section 73-3-2, of the Mississippi Code of 1972. The Board conducts the licensing process for attorney-applicants. Rule 2, § 5 of the Rules Governing Admission To The Mississippi Bar, requires that the Members of the Board deny applicants who lack "good moral character."

6. Defendant JAMES R. MOZINGO is the current executive director of the Board and, as such, is the chief administrative officer of the Board. Defendant MOZINGO enforces and administers the attorney-licensure process in Mississippi. Plaintiff seeks declaratory and injunctive relief against Defendant MOZINGO. At all relevant times hereto, Defendant MOZINGO was acting under color of state law. Defendant MOZINGO is sued in his individual and official capacities.

7. The Board maintains its office within the District, in Jackson, Mississippi.

8. Also made Defendants herein in their individual and official capacities as members of the Mississippi Board of Bar Admissions who, either by misfeasance or malfeasance, allow the existence of the general rules and universal inquiry stated in paragraph 1, and whose actions violate the rights guaranteed to applicants under federal law:

- a) LAWRENCE C. GUNN, JR.;
- b) CRAIG M. GENO;
- c) MILDRED JUANITA LESURE;
- d) PAUL M. LUCKETT;
- e) JENNIFER F. NICAUD;
- f) JEFFREY G. PIERCE;
- g) E. BARNEY ROBINSON, III;
- h) JEFFREY A. STYRES;

- i) PIETER TEEUWISSEN;
- j) CLYDE H. GUNN, III;
- k) H. HUNTER TWIFORD, III;
- l) JAY PAUL CARMEAN;
- m) KAREN K. SAWYER;
- n) MICHAEL C. BAREFIELD;
- o) KAY L. TRAPP; and
- p) JOHN DOE

FACTS

9. Under the Admissions Rules, the Board is charged with determining the character and fitness of each applicant for admission to The Mississippi Bar.

10. Pursuant to the Mississippi Rules Governing Admission to the Mississippi Bar, specifically Rule VIII § 6.I, the Defendants “shall recommend that the applicant not be admitted to practice law in Mississippi if, in the judgment of the Committee, the applicant has exhibited conduct substantially evidencing an inclination To be mentally or emotionally unstable to the extent that applicant is not suited for the practice of law” (emphasis added).

11. In March 2002, Plaintiff filed his Application for admission with the Board, for a license to practice law in Mississippi.

12. In August 2002, a hearing took place before the Character & Fitness Committee on Applicant’s request and a 3/2 split decision was rendered denying his request for Character and Fitness approval.

13. In formulating the decision mentioned in the paragraph above, the Committee and its members conducted an evaluation and made a determination of, Plaintiff’s mental health. The Committee and its members determined that Plaintiff was mentally and emotionally unstable, without the benefit of an accredited medical examination, opinion or documentation whatsoever.

14. In September 2002, the Board upheld the Committee's decision to deny Plaintiff's request for character and fitness approval.

15. In formulating the decision stated in the paragraph above, the Board and its members conducted an evaluation and made a determination of, Plaintiff's mental health. The Board and its members determined that Plaintiff was mentally and emotionally unstable, without the benefit of an accredited medical examination opinion or documentation whatsoever.

16. In September 2002, Plaintiff filed a request to appear before the Board in an appeals hearing. The hearing was held in April 2003.

17. In July 2004, the Board remanded the case to the Committee for further investigation.

18. In formulating the decision stated in the paragraph above, the Board and its members evaluated and made a determination of Plaintiff's mental health.

19. In August 2005, the Committee conducted a second hearing, received testimony from Plaintiff and again denied Plaintiff's application.

20. In formulating the decision stated in the paragraph above, the Committee and its members evaluated and made a determination of Plaintiff's mental health. The Committee and its members determined that Plaintiff was mentally and emotionally unstable, without the benefit of a medical examination and opinion or documentation from a licensed psychiatrist or psychologist.

21. In September 2005, the Board issued its second and final denial, adopting the Committee's second recommendation that Plaintiff's application be denied.

22. In formulating the decision stated in the paragraph above, the Board and its Committee members conducted their own mental examination and evaluation of Plaintiff's mental health. The Board and its members unanimously determined that Plaintiff was mentally and emotionally

unstable. The Board and its Committee members determined that Plaintiff was mentally and emotionally unstable. The Board and its Committee members are not licensed psychiatrists or psychologists qualified to render medical opinions as to Plaintiff's mental health. In fact, the Board held that Plaintiff was mentally and emotionally unstable because of criticisms that Plaintiff had made about the Board and its Committee members.

23. The members of the Board or Committee members who conducted a mental examination or evaluation of Plaintiff, as discussed in the preceding paragraphs, are not licensed psychiatrists or psychologists qualified to render medical opinions as to Plaintiff's mental health.

24. The members of the Committee and Board members who conducted the mental evaluations of Plaintiff, as discussed in the preceding paragraphs, simultaneously violated Mississippi laws and regulations which prohibit individuals from practicing medicine and/or psychology without a license.

25. The Defendants conducted a universal inquiry that holds that a mental evaluation is mandated for individuals whom the Board suspects as having mental illness.

26. The Defendants enforced a universal inquiry that holds that a mental evaluation is mandated for individuals who the Board suspects as having mental illness.

27. The Defendants enforced a general rule that they may conduct a mental health inquiry and then vote on whether they believe the applicant to be mentally ill.

28. To date, Plaintiff has not been admitted to The Mississippi Bar: the Board refuses to certify his admission because it regards him as having a mental illness.

29. Plaintiff has no history of mental illness. He has never been identified as mentally ill by any medical or psychological health practitioner. He has never failed to handle any matter entrusted to him by his previous employers because of mental illness or otherwise. To the

contrary, Plaintiff has achieved a level of skill, success, and reputation for an honest and productive citizen.

30. Nonetheless, the Defendant Board and Defendant Committee members decided unanimously that Plaintiff is mentally and emotionally unstable.

31. The mental health inquiries conducted by the Defendants violate applicants' rights under the Americans with Disabilities Act, the Civil Rights Act of 1871, and their rights to due process of law and equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution.

32. The general rules and universal inquiries described in the paragraphs above grossly exceed the lawful authority delegated to Defendants by Mississippi law and are ultra vires acts.

33. The general rules and universal inquiries described in the paragraphs above are not rationally connected to determining Plaintiff's character and fitness to be a member of The Mississippi Bar.

34. The general rules and universal inquiries described in the paragraphs above constitute an unreasonable and reckless disregard for Plaintiffs rights and protections under the clearly established laws of the United States and clearly established rights under the U.S. Constitution.

35. The Defendants' engagement in the unauthorized practice of medicine (i.e. conducting mental health evaluations) has substantially interfered with Plaintiff's ability to earn a living and engage in a lawful occupation in the State of Mississippi. He has lost significant business opportunities, lost income in responding to the Defendants' unlawful and ultra vires acts, and has suffered pain and mental anguish as a direct and proximate result of the Defendants' treatment of him. Furthermore, the mental health determination by the Defendants is causing Plaintiff great harm and anguish, in addition to damaging business opportunities.

36. Plaintiff has been forced to bring this lawsuit and will incur costs and fees in the prosecution of this complaint.

COUNT I
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
(Defendant: the Board)

37. Plaintiff realleges paragraphs one through thirty-six as though fully set out herein.

38. Plaintiff is a qualified individual with a disability under the ADA, 42 U.S.C. § 12131(2).

39. The Board is a public entity under the ADA. *Id.* § 12131(1)(B).

40. The Board is excluding Plaintiff from participation in or denying him the benefits of its services, programs or activities, or discriminating against him on the basis of his perceived disability as being mentally and emotionally unstable. *Id.* § 12132.

41. The actions by the Board violate the ADA, 42 U.S.C. 12 101 *et seq.* The Board is unlawfully placing additional burdens on Plaintiff's participation in or access to the benefits of the services, programs, or activities of both the Board's application process and the membership benefits of The Mississippi Bar and is doing so solely by reason of what it perceives to be the Plaintiff's disability.

42. The Board has discriminated and is continuing to discriminate against Plaintiff in violation of the ADA. The Board discriminates by equating the status of being regarded as being mentally and emotionally unstable with a complete inability to practice law.

43. The Board has further discriminated and is continuing to discriminate against Plaintiff in violation of the ADA by adjudicating applicants mentally and emotionally unstable in the absence of any medical observation whatsoever, and based on the Board's prejudices, myths, and stereotypes about persons it regards as mentally and emotionally unstable.

44. The Board has further violated the ADA by deviating from a required conduct-based inquiry to a policy of making mental health determinations based on the Board's perceived status of Plaintiff as mentally and emotionally unstable.

45. Moreover, the Admissions Rules as applied to Plaintiff by the Board violates the ADA by placing additional burdens (i.e., character rejection) on persons with a perceived status as being mentally and emotionally unstable, like Plaintiff.

46. Plaintiff denies that he is mentally and emotionally unstable and argues that any reasonable inquiry by a neutral, objective, licensed psychiatrist or psychologist would conclude likewise.

47. The ADA extends its protections to persons who are not disabled but who are regarded as such by a public entity. 42 U.S.C. § 12102(2)(C). Mental illness is a disability under the ADA. Thus, Plaintiff is protected by the ADA because Defendants regard him as having a disability, namely, mental illness.

48. The Board and the members of the Board and its Committee members entertain misconceptions about Plaintiff and they erroneously claim that Plaintiff "has a substantially limiting impairment that the individual actually does not have." 29 C.F.R. § 1630 app. § 1630.2(l).

49. In enacting the ADA, Congress intended that the "regarded as" definition of disability would protect people from discriminatory actions, based on employer's myths, fears and stereotypes about disability, which may occur even where a person does not actually have an actual disability.

50. In formulating its determination that Plaintiff is mentally ill, the Board has allowed its members to engage in the unauthorized practice of medicine, a criminal offense under Mississippi law.

51. The Board and its members have discriminated against Plaintiff by wrongfully regarding Plaintiff as mentally ill, and Plaintiff has suffered damages as a result.

COUNT II
VIOLATION OF PLAINTIFF'S
CIVIL RIGHTS (DUE PROCESS) UNDER SECTION 1983
(Defendants: All named Defendants except the Board)

52. Plaintiff realleges paragraphs one through fifty-three.

53. Each of the acts of Defendants alleged herein were done under the color and pretense of statutes, ordinances, regulations, customs, or usages of the State of Mississippi.

54. As a direct result by Defendants under the color and pretense of statutes, ordinances, regulations, customs, or usages of the State of Mississippi, Plaintiff's constitutionally protected right to due process has been and is being violated in that he is being deprived of property without any hearing before a qualified psychiatrist or psychologist. The property that Plaintiff is being deprived of includes his application fee for admission to The Mississippi Bar and the income he would receive from practicing law. Defendants are also discriminating against Plaintiff by refusing to certify his character because they regard Plaintiff as mentally ill.

55. Defendants have created an irrational procedure where the Plaintiff faces an irrebuttable presumption regarding mental illness or suspicion thereof based on separate, selectively applied facts regarding suspicions of mental and emotional instability, and he has not been given a meaningful opportunity to rebut the presumption. Instead, he has been given one alternative:

accept the determination of unqualified non-medical personnel or withdrew his application for admission.

56. As a result of Defendants' actions, Plaintiff's right to due process of law guaranteed by the Fourteenth Amendment is being violated. The actions of Defendants as described above are so entirely without evidentiary foundation, are without reason or basis, and are so arbitrary, capricious, confounded, and tyrannical that Plaintiff is denied both substantive and procedural due process of law (through established state procedures and/or random and unauthorized acts).

COUNT III
VIOLATION OF PLAINTIFF'S
CIVIL RIGHTS (EQUAL PROTECTION) UNDER SECTION 1983
(Defendants: All named Defendants except the Board)

57. Plaintiff realleges paragraphs one through fifty-seven.

58. Each of the acts of Defendants alleged herein were done under the color and pretense of statutes, ordinances, regulations, customs, or usages of the State of Mississippi.

59. As a direct result of the acts of Defendants under the color and pretense of statutes, ordinances, regulations, customs, or usages of the State of Mississippi, Plaintiff's constitutionally protected right to equal protection of the laws is being violated. The classification of Plaintiff and others like him for special treatment (mental health evaluation by Board and Committee members who are not licensed to conduct mental health examinations or make mental health determinations) based on unconfirmed and unproven suspicions of mental and emotional instability is arbitrary, irrational, and not reasonably related to the state interest with which Defendants are charged. Moreover, there is no rational connection between Plaintiff's criticism of the Defendants and the "mental and emotional instability" for which Defendants conduct their unlawful inquiry. Finally, Defendants' willingness to ignore objective evidence about Plaintiff's

character and fitness to practice law while focusing disproportionately on their interpretation of his mental health constitutes an arbitrary and unreasonable classification in violation of Plaintiff's equal protection rights.

60. Furthermore, Defendants' subjecting applicants to mental health evaluations by them, when they are not licensed psychiatrists or psychologists, grossly exceeds the scope of their lawful authority. Defendants arbitrarily separate certain applicants from the applicant pool and imposes additional, time-consuming, invasive and expensive burdens on them, thereby prohibiting them from engaging in legitimate business opportunities and violating their equal protection guarantees.

DAMAGES

61. As a result of the Defendants' trampling of Plaintiff's statutory and constitutionally protected rights, Plaintiff has been forced to expend considerable sums of money that he would not have otherwise been required to spend to defend his good mental health and good reputation.

62. Plaintiff has incurred and will incur loss of revenues that Plaintiff could have reasonably anticipated had his application for admission not been unlawfully processed.

63. Plaintiff is unable at this time to state exactly or finally the amount of damages sustained or to be sustained by the unlawful acts of Defendants. Plaintiff alleges that but for the unlawful acts by Defendants he would have been admitted to practice law in the State of Mississippi, would have opened a law office and practiced in the state, and estimates his current loss of revenue and business opportunities at \$200,000.

64. Plaintiff has suffered and continues to suffer mental pain and anguish, emotional stress, and humiliation because of Defendants' unlawful conduct.

65. As a result of the unlawful actions of Defendants, Plaintiff avers that he is entitled to punitive damages in the amount of (\$8,000,000) eight million dollars.

66. Plaintiff has no adequate remedy at law to prevent Defendants from continuing to conduct mental health evaluations when they are not licensed, qualified psychiatrists or psychologists. This causes the Plaintiff to suffer irreparable injury.

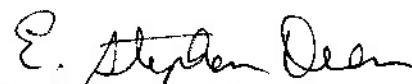
PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court will grant the following relief:

- a. Enter a preliminary injunction which:
 - i. enjoins the Defendants from evaluating and determining applicant's mental health when they are not licensed psychiatrists or psychologists;
 - ii. enjoins the Defendants from considering Plaintiff's status as reflecting a lack of character or fitness to practice law, especially in the absence of any medically demonstrable conduct indicating inability or unfitness to practice law.
- b. Enter a permanent injunction which:
 - i. enjoins the Defendants from evaluating and determining applicant's mental health when they are not licensed psychiatrists or psychologists;
 - ii. enjoins the Defendants from considering Plaintiff's status as reflecting a lack of character or fitness to practice law, especially in the absence of any medically demonstrable conduct indicating inability or unfitness to practice law.
- c. Compensate Plaintiff for the injuries he has suffered because of the Defendants' unlawful conduct;
- d. Award Plaintiff punitive damages against Defendants;
- e. Award Plaintiff all costs in this proceeding including the payment of reasonable attorneys' fees; and
- f. Such other and further relief as this Honorable Court deems appropriate. Plaintiff demands a jury trial on all issues so triable.

Dated: February 7, 2006

Respectfully submitted:



E. Stephen Dean
212 South Main St.
Piedmont, MO 63957
(573) 429-4192