IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFFREY D. KNICKMEIER,

Plaintiff,

v.

OPINION AND ORDER

03-C-0459-C

OFFICE OF LAWYER REGULATION,
KEITH L. SELLEN,
STATE OF WISCONSIN,
PEGGY A. LAUTENSCHLAGER,
and
SUPREME COURT OF WISCONSIN,

Defendants.

- -

In this action, plaintiff Jeffrey D. Knickmeier challenges the constitutionality of Supreme Court Rules 22.21, 22.26 and 22.27. Plaintiff also seeks a stay of the disciplinary proceedings against him in appeal number 02-2438-D and money damages against defendant Keith L. Sellen, the Director of the Office of Lawyer Regulation. Plaintiff has filed a motion for a preliminary injunction to vacate or modify his temporary suspension from the practice of law, stay the state court disciplinary proceedings against him and prohibit enforcement of Wis. Sup. Ct. Rules 22.26 and 22.27 to the extent those rules

hinder his federal practice. (In correspondence dated September 24, 2003, plaintiff withdrew his request that this court stay the proceedings in appeal number 02-2438-D.) Also before this court is defendants' motion to dismiss the complaint on the grounds that (1) the entire action is barred by the Rooker-Feldman doctrine; and the court is required to abstain under Younger v. Harris, 401 U.S. 37 (1971); (2) plaintiff's claims against the Office of Lawyer Regulation and its director, the State of Wisconsin, and the Wisconsin Supreme Court are barred by the Eleventh Amendment; (3) the claims against the director of the Office of Lawyer Regulation are barred by quasi-judicial or prosecutorial immunity; and (4) the claims against Attorney General Peggy A. Lautenschlager fail to state a claim upon which relief may be granted.

I conclude that abstention is warranted under the principles of Younger v. Harris, 401 U.S. 37. Accordingly, I will dismiss plaintiff's complaint without prejudice, without addressing defendants' other grounds for dismissal. Disposition of the case on defendants' motion to dismiss moots plaintiff's motion for a preliminary injunction.

For the sole purpose of deciding defendants' motion to dismiss, I find as fact the allegations in plaintiff's amended complaint. In addition, I take judicial notice of public records related to this case. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 456 (7th Cir. 1998) (court may take judicial notice of public documents without converting motion to dismiss into a motion for summary judgment).

FACTS

The Office of Lawyer Regulation received a grievance against plaintiff in September 2000. On February 19, 2001, before completing its investigation, the office filed a motion pursuant to Wis. Sup. Ct. Rule 22.21 with the Wisconsin Supreme Court for a temporary suspension of plaintiff's license to practice law. Case no. XX-014646-D. The supreme court ordered plaintiff to show cause why his license should not be temporarily suspended; plaintiff responded to the motion; and the Supreme Court of Wisconsin granted the office's motion for a temporary suspension of plaintiff's license on June 14, 2001. The court denied plaintiff's subsequent motions for reconsideration and modification of the order.

On September 13, 2002, the Office of Lawyer Regulation issued a formal disciplinary complaint against plaintiff in case number 02-2438-D. These state disciplinary proceedings are pending. A fact-finding hearing was held on September 3, 2003 before a referee. On September 30, 2003, the referee issued his report and recommendation to the Supreme Court of Wisconsin for final action. The parties have until October 19, 2003 to appeal the referee's findings of facts, conclusions of law and disciplinary recommendation. If neither party files an appeal, the supreme court will review the report and determine the appropriate disciplinary action, after which the parties may move for reconsideration.

On July 16, 2003, approximately one month before filing this action, plaintiff filed a motion with the state supreme court raising the same constitutional objections he is raising

in this action and made the same request for a stay of the proceedings in case number 02-2438-D. The supreme court denied his motion on September 16, 2003. Plaintiff then withdrew the identical portion of his preliminary injunction motion in this court requesting a stay of the proceedings in 02-2438-D.

OPINION

Plaintiff contends that the temporary suspension procedure under Wis. Sup. Ct. Rule 22.21 is unconstitutional because it fails to provide sufficient pre-deprivation process and that defendants violated his procedural due process and equal protection rights by employing the temporary suspension provision against him. Plaintiff objects to Wis. Sup. Ct. Rules 22.26 and 22.27, which set forth terms that may be imposed upon a disciplined attorney. He contends that these rules are unconstitutionally vague and overbroad in so far as the rules inhibit his federal court practice. Finally, plaintiff alleges that defendant Sellen, the director of the Office of Lawyer Regulation, is responsible for the damages plaintiff suffered as a result of the temporary suspension. Plaintiff seeks "loss of income and revenue, additional expenses and costs, potential legal fees and defense costs, embarrassment, humiliation, etc. and other general damage factors."

Plaintiff has come to the wrong court for redress. Federal courts may not take any actions to interfere with ongoing state administrative actions, such as lawyer disciplinary

hearings. Younger, 401 U.S. 37; Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982). In Younger, the Supreme Court held that federal courts are precluded from interfering with ongoing state criminal proceedings in order to preserve the longstanding principle of permitting "state courts to try state cases free from interference by federal courts." Id. at 43; see also Nelson v. Murphy, 44 F.3d 497, 501 (7th Cir. 1995). This non-interference principle stems from two sources: doctrines of equity jurisprudence and comity. Id. at 43-44. The Court has extended Younger to apply to other state judicial and administrative proceedings in the same manner as it applies to criminal court proceedings. See Ohio Civil Rights Commission v. Dayton Christian Schools, Inc., 477 U.S. 619, 627 (1986) (noting that Younger abstention applies to civil and administrative proceedings where important state interests are implicated); Barichello v. McDonald, 98 F.3d 948, 954-55 (7th Cir. 1996) (noting that Younger has been extended to proceedings for writ of attachment, postings of appeals bond, entry of ex parte order, civil contempt and lawyer discipline). In Middlesex, 457 U.S. at 432, the Supreme Court held that federal courts are required to abstain from interfering with state lawyer disciplinary proceedings that (1) are ongoing and judicial in nature; (2) implicate important state interests; and (3) offer an adequate opportunity for review of constitutional challenges. The disciplinary proceedings against plaintiff meet this three-part analysis. No extraordinary circumstances are present, such as bad faith or harassment. Middlesex, 457 U.S. at 437; Younger, 401 U.S.

at 53; Green v. Benden, 281 F.3d 661, 666 (7th Cir. 2002) (holding that Younger abstention applies to proceedings conducted by Illinois Department of Professional Regulation)

In this case, the factors all weigh in favor of abstention. First, the lawyer disciplinary proceedings constitute ongoing judicial proceedings. The parties have until October 19, 2003, to appeal the referee's findings of fact, conclusions of law and recommendation. See Wis. Sup. Ct. Rule 22.17(1). If neither party files an appeal, the supreme court will review the report and decide on the appropriate action to take against plaintiff. Wis. Sup. Ct. Rule 22.17(2). The court may "adopt, reject or modify the report's findings and conclusions or remand the matter to the referee for additional findings; and determine and impose appropriate discipline." Id. The parties may file a motion for reconsideration after the supreme court makes a determination of the appropriate discipline. Wis. Sup. Ct. Rule 22.18.

Wisconsin's lawyer disciplinary proceedings are judicial in nature. The state enforces the proceedings and administers them in a manner requiring the constant supervision and involvement of the state's supreme court. See Majors v. Engelbrecht, 149 F.3d 709, 712 (7th Cir. 1998); Storment v. O'Malley, 938 F.2d 86, 89 (7th Cir. 1991) (finding Illinois' attorney disciplinary system judicial in nature "[g]iven the elaborate procedure established by the Illinois Supreme Court for disciplining attorneys, including extensive hearings and

review by the supreme court"). Moreover, the Court of Appeals for the Seventh Circuit has held that attorney disciplinary proceedings implicate the same federalism concerns underlying the decision in Younger. Crenshaw v. Supreme Court of Indiana, 170 F.3d 725, 728 (7th Cir. 1999).

Second, Wisconsin's lawyer disciplinary proceedings implicate important state interests. The significance of regulating attorney conduct involves important public interests. "The judiciary as well as the public is dependent upon professionally ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice." Middlesex, 457 U.S. at 434. The preamble to Wis. Sup. Ct. Rule 21 sets forth the protective purpose of the lawyer disciplinary system: "The lawyer regulation system is established to carry out the supreme court's constitutional responsibility to supervise the practice of law and protect the public from misconduct by persons practicing law in Wisconsin." Like other states, Wisconsin has an important interest in regulating attorney conduct and ensuring the proper functioning of its corresponding regulatory proceedings. Middlesex, 457 U.S. at 432-33; Storment, 938 F2d at 89.

Third, Wisconsin's disciplinary proceedings offer adequate opportunity for review of plaintiff's constitutional challenges. Plaintiff admits that he has filed in his disciplinary proceedings before the Supreme Court of Wisconsin motions raising the same constitutional

challenges he raises in this action. Plt's Stmt. of Proposed Facts and Conclusions of Law, dkt. #5, at ¶ 26; Plt's Br., dkt. #4, at 2. Wisconsin's disciplinary proceedings provide the parties an opportunity to appeal the referee's report and recommendation, Wis. Sup. Ct. Rule 22.17(1), and a subsequent opportunity to file a motion for reconsideration after the supreme court issues its disciplinary decision. Wis. Sup. Ct. Rule 22.18(1). See Majors, 149 F.3d at 713 ("[s]ubsequent judicial review is a sufficient opportunity" to raise constitutional challenges). Because the state disciplinary proceedings are far from complete, plaintiff may continue to raise his constitutional challenges to the state supreme court.

Finally, no extraordinary circumstances exist that would warrant application of an exception to Younger. Plaintiff is required to allege bias or harassment in order for the bad faith exception to apply. Crenshaw, 170 F.3d at 729. Plaintiff has not alleged any facts that support an inference that extraordinary circumstances are present in his case. Therefore, abstention is required.

ORDER

IT IS ORDERED that plaintiff's complaint is DISMISSED.

FURTHER, IT IS ORDERED that plaintiff's motion for preliminary injunction is DENIED as moot.

Entered this 7th day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge