

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 08-20744-CIV-LENARD/GARBER

JOHN B. THOMPSON,

Plaintiff,

vs.

FLORIDA SUPREME COURT,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS (D.E. 5)

THIS CAUSE is before the Court on Defendant Florida Supreme Court's Motion to Dismiss ("Motion," D.E. 5), filed on April 21, 2008. Having reviewed the Motion, the related papers, and the record, the Court finds as follows:

I. Background

Plaintiff alleges that on February 19, 2008, the Florida Supreme Court entered an Order to Show Cause prohibiting him from representing himself further in various disciplinary matters in violation of his Sixth Amendment rights. (D.E. 4 at 6.) Subsequently on March 20, 2008, the Supreme Court ordered the Plaintiff not to represent himself. (Id.) Plaintiff seeks declaratory relief granting him his alleged constitutional right to represent himself in his pending disciplinary proceedings. (Id. at 12.) Plaintiff alleges that this Court has subject matter jurisdiction over his action pursuant to 42 U.S.C. § 1983. (Id. at 2.) He also appears to argue that this Court has an alternative basis for subject matter jurisdiction

under Article III of the Constitution as his Amended Complaint implicates the meaning and reach of the Sixth Amendment. (Id.)

II. Discussion

- A. Plaintiff's § 1983 claim fails because the Florida Supreme Court is not a "person."

Section 1983 provides that

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1983.

The Eleventh Circuit has held that "[a] state, a state agency, and a state official sued in his official capacity are not 'persons' within the meaning of § 1983." Edwards v. Wallace Community College, 49 F.3d 1517, 1524 (11th Cir. 1995). Plaintiff concedes that the Florida Supreme Court is a state entity. (D.E. 4 at 1.) Therefore, Plaintiff's claim for relief fails because the Florida Supreme Court is not a "person" within the meaning of § 1983.

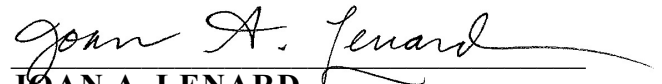
- B. Plaintiff's remaining claims are barred by the Eleventh Amendment

Assuming that this Court has subject matter jurisdiction under Article III of the Constitution, as Plaintiff contends in his Amended Complaint, his claims are still barred by the Eleventh Amendment. "Absent a legitimate abrogation of immunity by Congress or a waiver of immunity by the state being sued, the Eleventh Amendment is an absolute bar to

suit by an individual against a state or its agencies in federal court.” Gamble v. Florida Dep't of Health & Rehabilitative Services, 779 F.2d 1509, 1511 (11th Cir. 1986) (citing Edelman v. Jordan, 415 U.S. 651 (1974)). Plaintiff has not pointed to any such waiver of immunity.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant Florida Supreme Court's Motion to Dismiss (D.E. 12) is hereby **GRANTED**, Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE**, and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida this 3rd day of June, 2008.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Barry Garber
All counsel of record
08-20744-CIV-LENARD/GARBER