

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

THOMAS L. MEROS,	:	
Plaintiff,	:	CIVIL ACTION NO. 1:09-0143
v.	:	
		(MANNION, M.J.)
MARK S. DOWS,	:	
Defendant.	:	

MEMORANDUM AND ORDER¹

_____ On January 23, 2009, plaintiff Thomas Meros, proceeding *pro se*, filed a complaint under [42 U.S.C. §1983](#) against defendant Mark Dows. (Doc. No. [1-1](#)). Plaintiff alleges Defendant Dows, the director of the Pennsylvania Board of Law Examiners (“PBLE”), violated his due process and equal protection rights by denying him admission to the Pennsylvania bar. *Id.* Plaintiff seeks declaratory relief, injunctive relief, monetary damages and all other relief the court deems appropriate. *Id.*

Pending before the court is defendant’s motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Doc. No. [3](#)). For the reasons set forth below, the court will **GRANT** the defendant’s motion.

_____ ¹ For the convenience of the reader of this document in electronic format, hyperlinks to the court’s record and to authority cited herein have been inserted. No endorsement of any provider of electronic resources is intended by the court’s practice of using hyperlinks.

I. FACTS AND PROCEDURAL BACKGROUND

In 1983, plaintiff Thomas Meros was licensed to practice law in Ohio. (Doc. No. 1-1at ¶2). In September of 1998, plaintiff was suspended from the practice of law and, in July of 2000, he was permanently disbarred. *Id.*

In 2008, plaintiff alleges he submitted a petition to practice law in Pennsylvania to the Pennsylvania Supreme Court. *Id.* at ¶13. In June 2008, plaintiff allegedly received a letter from the Pennsylvania Supreme Court instructing him to submit the petition to the PBLE. *Id.* Accordingly, plaintiff mailed the petition to the PBLE on July 12, 2008. *Id.* at ¶12.

On July 14, 2008, plaintiff allegedly received a phone call from “Jill,” the Deputy Director of the PBLE, advising him that she was returning plaintiff’s petition and filing fee check because defendant Dows directed her to do so. *Id.* The plaintiff then requested to speak to defendant Dows, the director of the PBLE, directly. *Id.*

Plaintiff alleges he explained to defendant Dows that the Pennsylvania Supreme Court instructed him to file the petition with the PBLE, and the defendant responded sarcastically, “Did you get a call from the Chief Justice of the Supreme Court? Did he tell that to you?” *Id.* at ¶13. Plaintiff responded that he did not speak with the Chief Justice, but that he had received a letter

from the Pennsylvania Supreme Court.² Defendant Dows then told the plaintiff that he would do him a favor and not cash the check submitted with the petition, but, instead, he would send everything back to plaintiff. *Id.*

The plaintiff and defendant's conversation then shifted to the applicability of the Pennsylvania Rules of Disciplinary Enforcement, specifically Rule 216(c).³ (Doc. No. 1-1 at ¶15). Plaintiff alleges Dows said "The purpose of the Rule is so that we don't have attorneys like you who have been suspended or disbarred practicing law in the Commonwealth of

² Plaintiff alleges the letter stated the Pennsylvania Supreme Court would destroy the petition and attachments he had submitted. *Id.* at ¶13.

³ Pennsylvania Rule of Disciplinary Enforcement 216 is titled Reciprocal Discipline, and Rule 216(c) provides as follows:

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subdivision (a) of this rule, the Supreme Court may impose the identical or comparable discipline unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

(1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; or

(3) that the imposition of the same or comparable discipline would result in grave injustice, or be offensive to the public policy of this Commonwealth.

Pennsylvania.” *Id.* at ¶14. Plaintiff then asked the defendant if he had read all of the materials he had submitted to the PBLE. *Id.* Defendant initially responded that he only read the cover letter, but then also replied “No, only as far as the part that said you were disbarred.” *Id.* Plaintiff alleges that defendant Dows also said “. . . you’re asking me to change the [R]ules, you have no standing here . . . I was on the committee that changed that [R]ule about six years ago.” *Id.* at ¶15. Plaintiff then attempted to explain that the Pennsylvania Rules of Disciplinary Enforcement do apply to him, and that the defendant should read all of the documents he submitted. *Id.* Defendant sarcastically responded “It was a pleasure speaking with you,” and hung up the phone. *Id.*

The gravamen of plaintiff’s complaint is that the Ohio Supreme Court violated his constitutional rights when he was disbarred, and if defendant Dows had reviewed his petition and applied Rule 216(c), plaintiff would be eligible to practice law in Pennsylvania. Plaintiff alleges that the Ohio Supreme Court denied him due process, on procedural and substantive grounds, and equal protection of the law under the Fourteenth Amendment.⁴

⁴ Plaintiff claims the Ohio Supreme Court failed to give him proper notice of a hearing prior to being disbarred, and that he was entitled to a hearing prior to being disbarred. (Doc. No. [1](#)-1 at ¶39).

Thus, plaintiff claims that reciprocal discipline in Pennsylvania is barred under Rule 216(c) because it would result in a “grave injustice” as his disbarment in Ohio was due to violations of his constitutional rights. See [Pa.R.D.E. 216\(c\)\(3\)](#).

On January 23, 2009, plaintiff filed a complaint under [42 U.S.C. §1983](#) claiming defendant Mark Dows violated his due process rights and denied him equal protection of the law by failing to apply Pennsylvania Rule of Disciplinary Enforcement 216(c).⁵ (Doc. No. [1](#)-1). On February 10, 2009, the defendant filed a motion to dismiss, (Doc. No. [3](#)), and this motion is fully briefed. (Doc. No. [5](#); [13](#); & [15](#)).

II. MOTION TO DISMISS STANDARD

Defendant’s motion to dismiss is brought pursuant to provisions of Federal Rules of Civil Procedure 12(b)(1) and (6). When defendants move to dismiss a complaint under Rule 12(b)(1) for failure to allege subject matter jurisdiction, the allegations of the complaint must be treated as true and the plaintiff afforded the favorable inferences to be drawn from the complaint.

⁵ Although plaintiff makes reference to enforcing the Pennsylvania Rules of Disciplinary Enforcement generally, the only rule he specifically refers to in his complaint is Rule 216.

[N.E. Hub Partners, L.P. v. CNG Transmission Corp., 239 F.3d 333, 341 \(3d Cir. 2001\)](#)(citing *Mortensen v. First Federal Savings & Loan Ass'n.*, 549 F.2d 884, 891 (3d Cir. 1977); Fed. R. Civ. P. 8(f)). On a motion to dismiss for lack of subject matter jurisdiction, it is the plaintiff who has the burden of persuading the court that it has jurisdiction. [Gould Electronics, Inc. v. United States, 220 F.3d 169, 178 \(3d Cir. 2000\)](#). In contrast, a motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead “enough facts to state a claim to relief that is plausible on its face,” [Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1974 \(2007\)](#) (abrogating “no set of facts” language found in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). “The issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims.” *Id.* (quoting [Scheuer v. Rhodes, 416 U.S. 232, 236 \(1974\)](#)).

III. LEGAL ANALYSIS

Defendant Dows has raised various arguments as to why the plaintiff’s complaint should be dismissed. The court will consider these arguments below.

A. Standing

Defendant argues plaintiff lacks standing because [Pa.R.D.E. 216](#) does not apply to plaintiff and therefore, plaintiff's constitutional rights could not have been violated by defendant's alleged failure to apply the Rule to plaintiff. In support of defendant's standing argument, he cites to Pa.R.D.E. 201(a) and Pa.R.D.E. 216(a). [Pa.R.D.E. 201\(a\)](#) provides:

(a) The exclusive disciplinary jurisdiction of the Supreme Court and the Board under these rules extends to:

(1) Any attorney admitted to practice law in this Commonwealth.

Note: The jurisdiction of the Board under this paragraph includes jurisdiction over a foreign legal consultant, military attorney or a person holding a Limited In-House Corporate Counsel License. See the definitions of "attorney", "practice of law" and "respondent-attorney" in Rule 102.

(2) Any attorney of another jurisdiction specially admitted by a court of this Commonwealth for a particular proceeding.

(3) Any formerly admitted attorney, with respect to acts prior to suspension, disbarment, administrative suspension, or transfer to retired or inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute the violation of the Disciplinary Rules, these rules or rules of the Board adopted pursuant hereto.

(4) Any attorney who is a justice, judge or district justice . . . with respect to acts prior to taking office as a justice, judge or district justice, if the Judicial Conduct Board declines jurisdiction with respect to such acts.

(5) Any attorney who resumes the practice of law, with respect to nonjudicial acts while in office as a justice, judge or district justice.

(6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal services in this Commonwealth.

[Pa.R.D.E. 216\(a\)](#) provides: “[u]pon receipt of a certified copy of an order demonstrating that *an attorney admitted to practice in this Commonwealth* has been disciplined by suspension or disbarment in another jurisdiction . . . [].” (emphasis added).

The court agrees with defendant’s argument that [Pa.R.D.E. 216](#) does not apply to plaintiff, and therefore plaintiff lacks standing. Plaintiff argues that he “does not seek to alter or revise the Rules, or have the Rules declared to be unconstitutional. Plaintiff seeks to have the Rules uniformly enforced and applied to [p]laintiff in a fair and consistent manner with the spirit of the [Pennsylvania] Rules of Disciplinary Enforcement.” (Doc. No. [13](#) at 3). However, plaintiff does not fall under any of the descriptions in [Pa.R.D.E. 201\(a\)](#) where the applicability of the Rules is set forth. Furthermore, Rule 216, the Rule plaintiff specifically seeks enforcement of, only applies to attorneys admitted to practice law in Pennsylvania that are disciplined in another jurisdiction. See [Pa.R.D.E. 216\(a\)](#). Plaintiff has never been admitted to practice law in Pennsylvania which is clearly required for him to be subject to

Pennsylvania Rule of Disciplinary Enforcement 216. See [In re Iulo, 766 A.2d 335, 341\(Pa. 2001\)](#) (concluding that “only after respondent was admitted to practice law in this Commonwealth could he be the subject of a rule, [Rule 216], to show cause why reciprocal discipline should not be imposed”). Therefore, the court finds this action must be dismissed against defendant as plaintiff has no standing to complain Rule 216 was not properly applied.

B. *Rooker-Feldman*

Alternatively, defendant argues that this court does not have subject matter jurisdiction over the plaintiff’s claims pursuant to the *Rooker-Feldman*⁶ doctrine.

Section 1257 of Title 28 of the United States Code confers on the United States Supreme Court appellate jurisdiction to review final judgments of the states’ highest courts. The *Rooker-Feldman* doctrine is the doctrine that, by negative implication, inferior federal courts lack subject matter jurisdiction to review final judgments of the states’ highest courts. [E.B. v. Verniero, 119 F.3d 1077, 1090 \(3d Cir. 1997\)](#). The *Rooker-Feldman* doctrine has been interpreted to also apply to final decisions of lower state courts. [Id.](#) “Under the *Rooker-Feldman* doctrine, a district court is precluded from entertaining an action, that is, the federal court lacks subject matter jurisdiction, if the relief requested effectively would reverse a state court decision or void its ruling.” [Taliaferro](#)

⁶The *Rooker-Feldman* doctrine embodies the principles set forth in [Rooker v. Fidelity Trust Co., 263 U.S. 413 \(1923\)](#), and [District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 \(1983\)](#).

[v. Darby Twp. Zoning Bd., 458 F.3d 181, 192 \(3d Cir. 2006\).](#)
“[A]pplication of the *Rooker-Feldman* doctrine is necessarily limited to ‘cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.’” [Id.](#) (quoting [Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 \(2005\).](#))

[Donaven v. Keuerleber, 2009 WL 761195, *3 \(M.D.Pa. 2009\)](#)(Conner, J.). A state bar’s denial of admission is a state judicial act over which a federal court has no jurisdiction. See [Feldman, 460 U.S. at 482-83.](#)

In the instant action, plaintiff is properly considered a “state-court loser” for purposes of the *Rooker-Feldman* doctrine because he brought this lawsuit after being denied admission to the Pennsylvania bar by the PBLE, and after being disbarred by the Ohio Supreme Court.

Moreover, the plaintiff’s allegations indicate that his injuries arise out of (1) the PBLE’s decision to deny him admission and (2) the Ohio Supreme Court’s decision to disbar him, making his claims “inextricably intertwined” with these decisions. A federal claim is “inextricably intertwined” with an issue adjudicated by a state court, such that the *Rooker-Feldman* doctrine applies to prevent a lower federal court from adjudicating that claim, where: (1) the federal court must determine that the state court judgment was erroneously

entered in order to grant the requested relief; or (2) the federal court must take action that would negate the state court's judgment. [*In re Knapper*, 407 F.3d 573 \(3d Cir. 2005\)](#).

Here, plaintiff alleges that his equal protection and due process rights were violated by defendant because he failed to apply the Pennsylvania Rules of Disciplinary Enforcement, specially Rule 216(c). Plaintiff further complains this resulted in him being denied admission to the Pennsylvania bar and also caused a continuation of the Ohio Supreme Court's violations of his constitutional rights.

Consequently, plaintiff seeks that this court grant him declaratory and injunctive relief and monetary damages. With respect to declaratory relief, plaintiff seeks that the court declare (1) "that defendant's policy and custom and practice of denying Plaintiff the right to practice law is unconstitutional pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States and to the Constitution of Pennsylvania" and (2) "that the defendant has acted to aid and abet and to prolong and extend the existing wrongful conduct established and managed by the named judges within the State of Ohio . . . which original conduct resulted in the Plaintiff's suspension and disbarment." (Doc. No. [1](#)-1 at 17). With respect to injunctive relief, plaintiff

seeks that “defendant be permanently enjoined from engaging in any policy, program, or conduct which prevents the Plaintiff from being admitted to the practice of law before the courts of the Commonwealth of Pennsylvania.” *Id.* Finally, plaintiff seeks an amount which exceeds one million dollars in monetary damages from defendant for violating his constitutional rights. *Id.*

The plaintiff’s claims are inextricably intertwined in the instant action because the plaintiff cannot succeed on his claims without a finding by this court that the PBLE’s denial of his application for admission, and the Ohio state court proceedings resulting in his disbarment, were both wrongly decided. This court would have to make both of those determinations in order to grant plaintiff any of the relief he is seeking.

In light of the fact that the plaintiff is: (1) a “state court loser”; (2) complaining of injuries caused by his denial of admission and disbarment; (3) rendered before the instant proceedings were initiated; (4) which this court would necessarily have to review and reject in order to grant the plaintiff relief,⁷ the court lacks subject-matter jurisdiction over the plaintiff’s claims, as

⁷Even though plaintiff appears to primarily allege the Ohio Supreme Court violated his procedural due process rights, this claim is also barred under *Rooker-Feldman*. See [Walker v. Horn, 385 F.3d 321 \(3d Cir. 2004\)](#)(finding that even though a procedural due process claim is not a frontal attack on the propriety of the state court order, it nevertheless questions the

they are barred by the *Rooker-Feldman* doctrine. As such, the instant action must be dismissed.⁸

IV. CONCLUSION

For the reasons elaborated above, **IT IS ORDERED THAT** defendant's motion to dismiss, (Doc. No. 3), be **GRANTED**.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States Magistrate Judge

DATE: August 28, 2009

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propriety of the state court's order and is barred under *Rooker-Feldman*).

⁸ As the court finds it does not have subject matter jurisdiction over plaintiff's claims, the court need not consider defendant's remaining defenses of whether defendant is a proper party in this action and if so, whether qualified immunity applies.