UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-3384

(Summary Calendar)

JACQUELINE CARR, Individually
and As A Member of the Louisiana
State Bar Association,

Plaintiff-Appellant,

VERSUS

PASCAL F. CALOGERO, JR., Individually
and In His Capacity, Chief Judge of
The Louisiana Supreme Court, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA 91 2336 D)

(March 4, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Jacqueline Carr brought suit under 42 U.S.C. § 1983 (1988), alleging that certain Justices of the Louisiana Supreme Court and members of the Disciplinary Board of the Louisiana Bar Association violated her constitutional rights concerning her pending state disciplinary action. The district court dismissed Carr's claims as

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

to all defendants because of Carr's failure to state with particularity why the defense of immunity should not apply, and also because of the federal abstention doctrine. We affirm.

I

Carr, a Louisiana attorney, filed this civil rights action seeking monetary, injunctive and declaratory relief for alleged violations of her constitutional rights in connection with a pending disciplinary action against her. *See* Record on Appeal, vol. 1, at 86-115. Named as the original defendants were the Disciplinary Board of the Louisiana State Bar Association ("Disciplinary Board"), various Disciplinary Board members, and six of the seven Justices of the Louisiana Supreme Court. *See id.* at 86, 91-93.

The defendants moved to dismiss the suit. *See id.,* vol. 2, at 315-16, 333-34. The district court then ordered Carr to file an amended complaint stating with factual particularity why the suit should not be dismissed on the grounds of immunity and the federal abstention doctrine. *See id.,* vol. 3, 605-09. Carr filed an amended complaint adding two new defendants, attorneys Vance and Bailey.[1] *See id.* at 555-69. Noting that Carr's amended complaint did not contain the requested specificity and that Carr had "filed yet another rambling pleading that makes conclusory allegations

[1] Carr does not specifically challenge the dismissal of defendants Vance and Bailey in her brief on appeal. As she fails to make any argument on appeal that these defendants are liable under § 1983, we will not consider the issue. *See Brinkman v. Dallas County Deputy Sheriff Abner,* 813 F.2d 744, 748 (5th Cir. 1987) (declining to discuss claims not pressed on appeal).

with little particularity or support," *id.* at 552, the court dismissed Carr's claims as to all defendants.[2] *See id.* at 515-16. The court justified dismissal on the grounds of immunity and the federal abstention doctrine. *See id.* at 552. Carr appeals.[3]

II

A

In *Stump v. Sparkman,* 435 U.S. 349, 356-57, 98 S. Ct. 1099, 1105, 55 L. Ed. 2d 331 (1978), the Supreme Court held that judges defending against § 1983 actions enjoy absolute immunity from damages liability for judicial acts that are not performed in the clear absence of all jurisdiction. In *Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 433-34, 102 S.Ct. 2515, 2522, 73 L. Ed. 2d 116 (1982), the Supreme Court recognized the essentially judicial nature of bar disciplinary proceedings actions. Furthermore, those officials whose responsibilities are comparable in function to a judge's are also entitled to absolute immunity from liability. *Johnson v. Kegans,* 870 F.2d 992, 995-96 (5th Cir.), *cert. denied,* 492 U.S. 921, 109 S. Ct. 3250, 106 L. Ed.

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[2] The court granted the Justices' motion to dismiss for lack of jurisdiction, for judgment on the pleadings, and abstention, or, alternatively, for summary judgment. *See* Record on Appeal, vol. 3, at 553-54. The court also granted the Disciplinary Board members' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, and alternatively motion for summary judgment. *See id.* at 553.

[3] The Disciplinary Board members have requested that we impose sanctions against Carr for filing a frivolous appeal. *See* Fed. R. App. P. 38. However, as we find that Carr's appeal is not entirely without merit, we decline to sanction Carr. *See Sturgeon v. Airborne Freight Corp.,* 778 F.2d 1154, 1161 (5th Cir. 1985).

2d 596 (1989). Thus, bar association grievance committee members have been held absolutely immune from suit. *See Slavin v. Curry,* 574 F.2d 1256, 1266 (5th Cir. 1978), *modified on other grounds on reh'g,* 583 F.2d 779 (5th Cir. 1978), *overruled in part on other grounds, Sparks v. Duval County Ranch Co.,* 604 F.2d 976, 978 (5th Cir. 1979) (en banc).

We have adopted the heightened pleading requirement for claims against state actors in their individual capacities.[4] *Elliot v. Perez,* 751 F.2d 1472, 1473 (5th Cir. 1985); *see also Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 954 F.2d 1054, 1057-58 (5th Cir. 1992), *cert. granted,* ___ U.S. ___, 112 S.Ct. 2989, 120 L. Ed. 2d 867 (U.S., June 22, 1992). As we stated in *Elliot:*

> Allowing pretrial depositions, especially those taken adversely of the governmental official to ferret all of his actions and the reasons therefor, either for the purpose of being able to plead more specifically, or for use in the prospective trial would defeat and frustrate the function and purpose of the absolute and qualified immunity ostensibly conferred on the official.

Id. at 1479. Thus, in cases which involve the likely defense of immunity))qualified or absolute))a plaintiff's complaint must state with detailed facts and particularity the basis for the claim, including why the defense of immunity cannot be sustained. *Id.* at 1482.

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[4] The Supreme Court has similarly adopted the heightened pleading requirement. *See Siegert v. Gilley,* ___ U.S. ___, 111 S. Ct. 1789, 1795, ___ L. Ed. 2d ___ (1991) (Kennedy, J., concurring) ("[The] avoidance of disruptive discovery is one of the very purposes for the official immunity doctrine, and it is no answer to say that the plaintiff has not yet had the opportunity to engage in discovery.").

Carr argues that the district court erred in dismissing her claims for damages due to her failure to state with particularity why immunity should not apply. We disagree. In her original complaint, Carr sought damages and attorney's fees arising from the defendants' alleged attempt to deprive her of her right "as a female in a profession to earn a fee in a winning judgment." Record on Appeal, vol. 1, at 111. While her amended complaint cites several alleged constitutional infirmities in the disciplinary proceedings, *see id.,* vol. 3, at 560-67, the complaint contains only conclusory allegations which fail to meet the heightened pleading requirement. Accordingly, Carr's amended complaint alleges no facts which would lead us to question the availability of the immunity defense to either the Louisiana Supreme Court Justices or Disciplinary Board members.

B

Carr also contends that the district court erred in dismissing her claims for injunctive and declaratory relief pursuant to the federal abstention doctrine. *See* Brief for Carr at 32-34. In *Younger v. Harris,* 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), the Supreme Court held that a federal court should not interfere with state criminal proceedings absent a showing that the proceedings were brought in bad faith, for harassment purposes, or under other extraordinary circumstances.[5] *Id.* at 45, 91 S. Ct. at

[5] This principle is applicable to both the injunctive and declaratory relief that Carr is seeking. *See Samuels v. Mackell,* 401 U.S. 66, 72-73, 91 S. Ct. 764, 767-68, 27 L. Ed. 2d 688 (1971) (applying *Younger* doctrine to claim for declaratory relief).

751. The *Younger* abstention doctrine has been extended to disciplinary actions brought by state bar associations against attorneys. *See Middlesex County,* 457 U.S. at 433-34, 102 S. Ct. at 2522 (holding that New Jersey's bar disciplinary proceedings are invested with sufficiently important state interests to warrant federal court deference). Therefore, "[u]nder *Younger,* the federal court should avoid impeding . . . state authorities in a disciplinary proceeding involving an attorney, absent allegations and proof of bad faith." *Hensler v. District Four Grievance Committee,* 790 F.2d 390, 391 (5th Cir. 1986). "The bad faith exception is narrow and is to be granted parsimoniously." *Id.*

Carr argues that she "has sufficiently alleged acts of bad faith and harassment to overcome the presumption of abstention in favor of comity." Brief for Carr at 32. We disagree. The summary judgment[6] record does not show that the defendants acted in bad faith when they brought disciplinary proceedings against Carr. Formal charges were brought against Carr based on her convictions for theft and unauthorized use of funds, as well as for her failure to pay an expert witness fee. *See* Record on Appeal, vol. 2, at 371-73. To defeat a properly supported motion for summary judgment, Carr must go beyond the pleadings and designate specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *see Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 256-57,

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[6] The district court granted, in the alternative, summary judgment for the Louisiana Supreme Court Justices and members of the Disciplinary Board. *See* Record on Appeal, vol. 3, at 533-34. Thus, we review Carr's argument against abstention under a summary judgment standard.

106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986). Carr has not done so, and her conclusory allegations of bad faith are insufficient to create a genuine issue of material fact. Under such circumstances, we cannot interfere with a state's control over the unethical activities of its lawyers. *See Hensler,* 790 F.2d at 392.

Carr maintains that abstention is not proper because the state waived abstention by inviting Carr to seek relief in federal court. *See* Brief for Carr at 32. Although a state may waive abstention by voluntarily choosing to submit to a federal forum, *see Ohio Bureau of Employment Services v. Hodory,* 431 U.S. 471, 480, 97 S.Ct. 1898, 1904, 52 L. Ed. 2d 513 (1977), the record indicates that all defendants moved for dismissal on the basis of *Younger* abstention. *See* Record on Appeal, vol. 2, at 315, 338-352. Thus, as the state, itself, has not voluntarily chosen to submit to a federal forum, it is of no moment whether Carr was invited to seek relief in federal court.

III

For the foregoing reasons, we **AFFIRM** the district court's dismissal, and **DENY** the Disciplinary Board's request to impose sanctions against Carr.