

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	) MB Docket No. 14-82
	)
<b>PATRICK SULLIVAN</b>	) FRN 0003749041, 0006119796,
(Assignor)	) 0006149843, 0017196064
	)
and	) Facility ID No. 146162
	)
<b>LAKE BROADCASTING, INC.</b>	) File No BALFT-20120523ABY
(Assignee)	)
	)
Application for Consent to Assignment of	)
License of FM Translator Station W238CE,	)
Montgomery, Alabama	)

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**LAKE BROADCASTING, INC.’S PARTIAL  
OPPOSITION TO ENFORCEMENT BUREAU’S  
MOTION TO PERMIT EXAMINATION  
BY EXPERT PSYCHOLOGIST**

Pursuant to Section 1.311 of the Commission’s Rules, Lake Broadcasting, Inc. (“Lake”), by its attorney, hereby opposes, in part, the Enforcement Bureau’s (“Bureau”) July 9, 2015 “Motion to Permit Examination by Expert Psychologist” (“Motion”) in this proceeding. In support whereof, the following is shown:

1. The Motion (at Para. 6) asks the Presiding Judge to permit Dr. Kimberly Weitzl to examine Mr. Michael Rice during July 1-15, 2015 and to “ask the questions she deems necessary, within reason, to properly assess Mr. Rice’s current mental state and rehabilitation”. Lake does not object to Dr. Weitzl interviewing Mr. Rice. However, it strenuously objects to the proposed scope of examination and to the exclusion of Mr. Rice’s psychologist, Dr. Ann

Duncan, from being present at the interview as an observer.

2. The Motion arises out of Lake's proposal in a July 8, 2015 e-mail memo to Bureau counsel, as follows:

"As to "manner, conditions, and scope of the examination," this is what counsel for Mr. Rice proposes:

- (1) Mr. Rice would be interviewed by Dr. Kimberly Weitzl somewhere in the St. Louis area during the week of August 17-21 for a period not to exceed 1 ½ hours.
- (2) In accordance with previous rulings and understandings between the parties, Dr. Weitzl would only question Mr. Rice about events, etc. occurring after December 1999 when he was released from prison, with the exception that she may also question him about his participation in the MOSOP program in prison, which ended in February 1999 when Mr. Rice was given a Certification of completion.
- (3) Mr. Rice's psychologist, Dr. Ann Duncan, will be present at the interview as an observer and not for the purpose of advising Mr. Rice during the interview. Mr. Rice's attorney will not be present.
- (4) The interview will be recorded, and a copy of the transcript will be given to Mr. Rice's counsel within two weeks after the interview."

In a July 9, 2015 e-mail memo from Bureau Counsel Gary Oshinsky, he stated: "The place and dates for the interview you mention are fine with us." However, he objected to the remaining three conditions, and the Motion followed. (While the Motion (at Para. 6) specifies that the interview should occur "during the [July 1- 15, 2015] time period noted in the Joint Proposed Discovery Schedule," that is clearly impossible at this late date, and Lake assumes that the Bureau intends to accede to the August 17-21 dates that Lake proposed.)

3. Much time was spent during the June 24, 2014 Prehearing Conference in this proceeding addressing the question of the start date for Mr. Rice's rehabilitation. It was agreed that the previous hearing record was *res judicata* as to law and facts of Mr. Rice's misconduct (Tr. 51 and Para. 27 of the *Hearing Designation Order* ("HDO") herein). Mr. Rice began his incarceration on September 30, 1994 and was released from prison on December 29, 1999. On February 17, 1999, Mr. Rice successfully completed the prison's Missouri Sexual Offender's

Program ("MOSOP"). Lake understood that the gist of the Prehearing Conference discussion on this subject was to peg the start of rehabilitation at December 29, 1999 with a look-back to the MOSOP program, or, at most, September 30, 1994, when Mr. Rice's prison term began. While the Bureau's expert, Dr. Weitzl, would like to inquire as to matters before September 30, 1994, there is absolutely no legal basis to allow inquiry into that period.

4. Despite the legal limitations specified in Paragraph 3 above, the Motion maintains (at Para. 1) that a broader inquiry is warranted so as not to inhibit Dr. Weitzl's "ability to assess Mr. Rice's *mental state* and his purported rehabilitation" (emphasis added). In this connection, the Motion erroneously asserts (at Para. 3) that "Mr. Rice has placed his mental state at issue". Mr. Rice has done no such thing, and the Bureau should not be allowed to introduce a "mental state" issue obliquely into this proceeding. The *HDO* says nothing about Mr. Rice's "mental state". Rather, it repeats at least four times that "we must weigh whether Rice has been sufficiently *rehabilitated*" (emphasis added) (*HDO* Para. 11 and Paras. 12, 13, and 21). While Dr. Weitzl may feel (Motion, Para. 4) that she cannot judge Mr. Rice's "mental state" without inquiring into the actions for which Mr. Rice was incarcerated, his acceptance of responsibility, any history of substance abuse, and his maintenance behavior, that is irrelevant to this proceeding. Her mission should be to measure Mr. Rice's rehabilitation – how he has conducted his life since he left prison -- not his "mental state".

5. Next, the Motion mistakenly asserts (Para. 5) that Lake wishes its counsel to attend Mr. Rice's interview. But see Paragraph 2 above – Condition 3 – in which Lake specifically states: "Mr. Rice's attorney will not be present". On the other hand, Lake would like Mr. Rice's psychologist, Dr. Duncan, to be present at the interview as an observer. *Id.* Condition 3. And there is case precedent for allowing experts to be present at a client's interview. See *Dziwanoski v. Ocean Carriers Corp.*, 26 FRD 595 (DC Md. 1960); *Lowe v.*

*Philadelphia Newspapers, Inc.*, 101 FRD 296 (ED Pa. 1983).

6. Finally, the Motion is silent as to whether Mr. Rice's interview will be transcribed. Lake requests that transcription be ordered and that a copy of the transcript be made available to Lake within two weeks after the interview.

WHEREFORE, in view of the foregoing, Lake respectfully requests that the Enforcement Bureau's Motion should be denied to the extent that it would give excessive latitude to Dr. Weitzl in her questioning of Mr. Rice at an interview, would prevent Dr. Duncan from attending the interview, and would prevent an interview transcript from being prepared and provided to Lake. Dr. Weitzl should only be allowed to question Mr. Rice about events, etc. occurring after December 1999 when he was released from prison, with the exception that she may also question him about his participation in the MOSOP program in prison, which ended in February 1999.

Respectfully submitted,

  
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Jerold L. Jacobs

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Dated: July 9, 2015

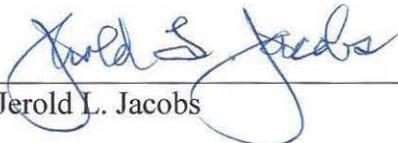
**CERTIFICATE OF SERVICE**

I, Jerold L. Jacobs, hereby certify that on this 9th day of July, 2015, I filed the foregoing “Lake Broadcasting, Inc.’s Partial Opposition to Enforcement Bureau’s Motion to Permit Examination by Expert Psychologist” in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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