

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

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

**ENFORCEMENT BUREAU'S OPPOSITION TO
LAKE BROADCASTING INC.'S MOTION FOR A PROTECTIVE ORDER**

1. On August 4, 2015, the Presiding Judge issued an Order granting “unconditionally” the Enforcement Bureau’s (Bureau) Motion to Permit Examination by Expert Psychologist (*Order*).¹ In this *Order*, the Presiding Judge denied, *inter alia*, a request to issue a protective order “that the interview [examination] be transcribed and the resultant transcription be made available to Lake no more than two weeks after the interview.”² In denying Lake’s request, the Presiding Judge explained that “Lake has failed to provide any reason, let alone

¹ See *Order*, FCC 15M-26 (ALJ, rel. Aug. 4, 2015).

² *Id.* at 1. *Order*, FCC 15M-26, also denies requests to limit the questions asked by Dr. Weigl and to have Mr. Rice’s own psychologist present at the interview. *Id.*

demonstrate good cause, why its request should be granted.”³ On August 19, 2015, Lake Broadcasting, Inc. (Lake) filed a Motion For Protective Order⁴ that makes an identical request for a transcription of the interview as the one denied by the Presiding Judge’s *Order* FCC 15M-26.⁵ For the reasons set forth below, the Chief, Enforcement Bureau, by his attorneys opposes Lake’s request.

2. First, Lake’s motion appears to be nothing more than an interlocutory appeal of *Order*, FCC 15M-26. Pursuant to Section 1.301(b) of the Commission’s rules, except as provided in paragraph (a) – which does not apply to the circumstances here – appeals from interlocutory rulings shall be filed only if allowed by the Presiding Judge.⁶ If Lake had wanted to appeal *Order*, FCC 15M-26, Lake was required to first file a request for permission to file such an appeal within 5 days after *Order*, FCC 15M-26, was released.⁷ Lake did not file such a request. In addition, even if the Presiding Judge were to consider Lake’s motion as its request to file an appeal, it is untimely. Pursuant to the Commission’s rules, Lake was required to file such a request no later than August 11.⁸ As noted above, Lake did not file the present motion until August 19. As such, Lake’s motion is both unauthorized and untimely, and should be disregarded on those grounds alone.

3. Second, Lake’s motion is not supported by alleged “newly discovered research.”⁹ In the case cited by Lake, the court determined that the suit was based on unsubstantiated allegations,

³ *Id.* at 2. The Order also states “Lake has not expressed any concern that Dr. Weitzl will misrepresent Mr. Rice’s responses in her written report. Nor has Lake suggested that there are any special circumstances that justify the creation of a transcript.” *Id.*

⁴ See Lake’s Motion For Protective Order Pursuant to Section 1.313 of the Commission’s Rules, filed August 19, 2015 (Motion).

⁵ See Motion at 1 (“Lake requested a transcript be made of the interview and that request was denied”).

⁶ See 47 C.F.R. §1.301(b)

⁷ See *id.*

⁸ See *id.*

⁹ See Motion at 2 (citing *Smego v. Weitzl*, 2013 U.S. Dist. LEXIS 66796 (C.D. Ill. May 10, 2013)).

filed against the wrong individual (not one of the institutionalized *pro se* Plaintiff's treating physicians) and contained "vague charges" where "no plausible claim is stated."¹⁰ Lake does not explain how that case is germane to this proceeding.

4. Lastly, Lake's motion alleges that the Bureau has delayed scheduling the interview ordered by the Presiding Judge in *Order*, FCC 15M-26, and that such a delay would jeopardize the deposition schedule agreed to by Bureau counsel to conduct depositions during the week of September 7, 2015.¹¹ As evidenced by the attached email, Bureau counsel has been attempting to arrange for the interview with Mr. Rice, but Lake's counsel has failed to furnish the required contact information to set up that interview.¹² As the attached email also confirms, deposition dates were set for the week of October 12, 2015, based on scheduling requirements and conflicts of counsel for both parties.

5. Neither Lake's claim that the Bureau's "dilly dallying" with the schedule "with respect to the Weitzl interview and report preparation" nor its alleged "newly discovered" evidence of "bias" amounts to "harassment and oppression" of Mr. Rice warranting a protective order pursuant to the Commission's rules.¹³ Indeed, Lake offers no authority that either of these claims amount to a "compelling reason" to interfere with the court-ordered interview, let alone amount to a basis for the Presiding Judge to reverse his previous *Order*.¹⁴

¹⁰ This case was available to Lake's counsel at the time the Bureau filed its Motion for Psychological Examination. Lake does not allege that the case "presents a new or novel question of law or policy," as required under Rule 1.301(b), and would not therefore provide a basis for overturning the Presiding Judge's determination in the *Order*, even if an appeal was authorized here. *See* 47 C.F.R. § 1.301(b).

¹¹ *See* Motion at 2.

¹² *See* email dated August 7, 2015, from Gary Oshinsky, counsel for the Enforcement Bureau, to Jerold Jacobs, counsel for Lake Broadcasting, Inc., attached hereto. Lake's counsel does possess the required contact information for Dr. Weitzl, but chose to file the instant pleading rather than arranging for the court-ordered interview. *See* EB's Motion To Compel Production of Documents, filed March 23, 2015, attachment A.

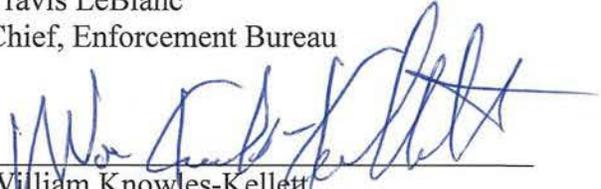
¹³ *See* 47 C.F.R. § 1.313.

¹⁴ *See Order*, FCC 15M-26, at 3, 4.

6. As the record reflects, the Bureau has acted appropriately to arrange for the interview provided in *Order*, FCC 15M-26, and to complete the discovery which will take place thereafter. At this point in time, the Bureau lacks the contact information necessary to complete arrangements for the interview, which pursuant to the Presiding Judge's *Order*, Lake is required to provide. Accordingly, the Bureau respectfully requests that the Presiding Judge deny Lake's motion for a protective order.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



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August 24, 2015

ATTACHMENT A

From: Gary Oshinsky
Sent: Friday, August 07, 2015 9:44 AM
To: Jerold Jacobs <jerold.jacobs.esq@verizon.net>; William Knowles-Kellett <William.Knowles-Kellett@fcc.gov>
Subject: RE: Setting up Weitl interview of Rice

Hi Jerry,

That all sounds good, I will need Mr. Rice's contact information for Dr. Weitl so she can make arrangements. However, my recollection is that we had discussed the week of October 12 for the deposition dates, and I have already asked Dr. Weitl to block out this time for a deposition. We also discussed that September 7 is Labor Day week and this could be problematic for our other witness. In any event, if we're going to try to change the date we should talk. Thanks.

Gary

Gary A. Oshinsky
Investigations and Hearings Division
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445 12th Street, S.W., Room 4-A335
Washington DC 20554
202-418-7167

*** Non-Public: For Internal Use Only ***

From: Jerold Jacobs [<mailto:jerold.jacobs.esq@verizon.net>]
Sent: Thursday, August 06, 2015 5:06 PM
To: William Knowles-Kellett <William.Knowles-Kellett@fcc.gov>; Gary Oshinsky <Gary.Oshinsky@fcc.gov>
Subject: Setting up Weitl interview of Rice

8/6/15

Bill and Gary:

I spoke to Mike Rice yesterday, and he is available to be interviewed by Dr. Weitl anytime this month. He assumes the interview will be in St. Louis or environs, and he just needs a few days' notice. Please arrange it with Dr. Weitl and let me know. As we discussed, the sooner the better so that she can prepare her report well in advance of depositions during the week of September 7.

Thanks.

Reply emails to: jeroldjacobs12@gmail.com.

Jerry

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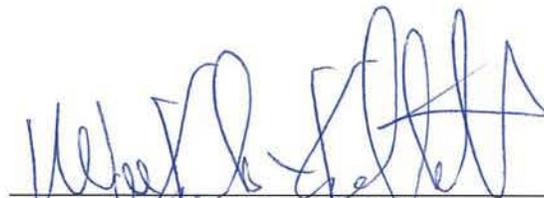
CERTIFICATE OF SERVICE

William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 24th day of August, 2015, sent by first class United States mail and by email copies of the foregoing ENFORCEMENT BUREAU'S OPPOSITION TO LAKE BROADCASTING INC.'S MOTION FOR A PROTECTIVE ORDER to:

Jerold L. Jacobs, Esq.
Law Offices of Jerold L. Jacobs
1629 K Street, N.W., Suite 300
Washington, DC 20006
jeroldjacobs12@gmail.com
Counsel for Patrick Sullivan and Lake Broadcasting, Inc.

And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, DC 20554



William Knowles-Kellett