

**Before the
Federal Communications Commission
Washington, D.C. 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 Statin W238CE,)
Montgomery, Alabama)

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

**LAKE BROADCASTING, INC.’S MOTION TO
REJECT EXHIBITS, HALT DEPOSITIONS, AND
REQUIRE A NEW EVALUATION OF MICHAEL
RICE OR GRANT SUMMARY DECISION**

Pursuant to Sections 1.319 and 1.354 of the Commission’s Rules, Lake Broadcasting, Inc. (“Lake”), by its attorney, hereby asks the Presiding Officer to reject two hearing exhibits informally proffered to Lake by the Enforcement Bureau (“Bureau”) in this proceeding on March 21, 2016, halt the taking of depositions thereon, and require a new psychological evaluation of Mr. Michael Rice, or grant summary decision in Lake’s favor on all of the issues designated in this proceeding. In support whereof, Lake shows the following:

1. By *Order*, FCC 15M-26, released August 4, 2015, the Presiding Judge permitted

Dr. Kimberly Weitzl to examine Mr. Rice without any restrictions but authorized Lake (at p. 3) “to take Dr. Weitzl’s deposition and challenge her written report in advance of trial” (emphasis added). This is that challenge.

2. Attached hereto as Exhibit A is a “Summary Assessment of Mr. Rice Report” (“Assessment”), prepared on April 7, 2016 by Drs. Ann Dell Duncan-Hively and Wells Hively, psychologists, who have previously participated in this proceeding and have examined Mr. Rice. They have studied Dr. Weitzl’s 21-page March 14, 2016 “Sex Offender Evaluation” (“Evaluation”), and their Assessment is the centerpiece of this pleading. Lake has not attached the Evaluation, because of its very incomplete, inaccurate, and scandalous nature; for that reason, Lake does not want the Evaluation to be included in the hearing record. Lake hereby asks the Bureau to provide a copy of the Evaluation to the Presiding Judge for his *in camera* review. Most importantly, the Assessment concludes (at p. 4) that “Dr. Weitzl failed to meet the professional standards required in a forensic assessment, and therefore her conclusions that Mr. Rice is at high risk to reoffend cannot be trusted or relied upon to form any conclusion about his life between 2000 and 2016” and his rehabilitation.

3. The Bureau also proffered a two-page “Statement of Tammy Gremminger” (Statement), a Parole Officer at the Missouri Department of Corrections, which is also very inaccurate and scandalous. The Bureau is also hereby asked to make that Statement available to the Presiding Judge for his *in camera* review. Lake urges that both the Evaluation and the Statement are littered with unsupported assertions and misstatements so that they cannot be received in evidence under Section 1.354 of the Rules and cannot be the basis for deposing Dr. Weitzl or Ms. Gremminger under Section 1.319(a) of the Rules. Under these circumstances, the Presiding Judge is requested to order a new psychological evaluation of Mr. Rice by a different psychologist other than Dr. Weitzl, should quash Dr. Weitzl’s deposition, and should reject Ms.

Gremminger's Statement and quash her deposition.

4. In FCC 15M-26, supra, the Presiding Judge allowed Dr. Weitzl to delve into Mr. Rice's mental state as part of her rehabilitation analysis. However, the *Hearing Designation Order* ("HDO") herein 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 have felt that she could not judge Mr. Rice's "mental state" and rehabilitation 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 inquiry clearly got out of control in the Evaluation, for the Evaluation almost completely omits discussion of any concrete evidence of rehabilitation! As the Assessment states (at pp. 3 and 4):

It appears from the tone and content of the report that her focus on his history prior to incarceration dominated her so called psychological assessment (56 percent of the report deals with events before 2000). From her point of view, Mr. Rice is vermin who got away with illegal behavior and therefore she assumes him to be at high risk of engaging in sexual activity with minors even though he is currently 74 years of age.

[Weitzl] also was free to conduct her own psychological evaluation using the available psychological instruments to validate her opinion that he currently suffers from alcohol abuse, narcissistic personality disorder, and/or pedophilia. Instead, she committed the error of assuming all those categories still applied rather than actually performing a psychological assessment for his current functioning.

5. These errors of commission and omission are not surprising, because Lake previously brought to the Presiding Judge's attention in its August 18, 2015 "Motion for a Protective Order" that between 2010 and the present, Dr. Weitzl has been involved in some 20 federal or state lawsuits concerning her psychological examinations. And, most distressingly, in at least one case, *Smego v. Weitzl*, 2013 U.S. Dist. LEXIS66796 (May 10, 2013), Plaintiff

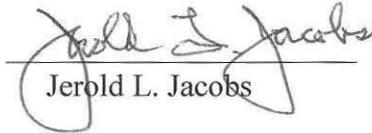
alleged that “Dr. Weitzl made numerous false allegations and statements, twisted facts to the point of unrecognizability, and omitted so many essential facts including exculpatory evidence as to render her report an outright lie”. The Assessment reaches a similar conclusion as to the Evaluation herein. Thus, the Presiding Judge is fully warranted in rejecting the Evaluation in toto and ordering the Bureau to find a new psychologist who will conduct a new comprehensive and unbiased interview of Mr. Rice and issue a new report. Lake can then study that new report and depose the new psychologist.

6. As to Ms. Gremminger’s Statement, it should also be rejected out of hand. Ms. Gremminger has not seen Mr. Rice in 16 or more years, and bases her Statement mostly upon pre-2000 documents that she recently reviewed. Ms. Gremminger is not an expert witness, she is not licensed in the State of Missouri, and no attempt has been made by the Bureau to qualify her as an expert. Her view that “Mr. Rice still poses a substantial risk of re-offense” (p. 2) and all of her other opinions are not entitled to any credence. Hence, Lake urges that her Statement should be rejected, and she should not be deposed.

7. In the alternative, if the Presiding Judge does not reject Dr. Weitzl’s Evaluation and Ms. Gremminger’s Statement outright, and does not block their depositions, Lake asks the Presiding Judge to immediately grant Summary Decision under Section 1.251 of the Rules to Lake upon all of the issues specified in the *HDO*. If the Presiding Judge expresses willingness to entertain this Summary Decision request, Lake will supply the corroborating materials

specified in Section 1.251(a) of the Rules forthwith, copies of most of which have already been placed in the hearing record in this proceeding via discovery practice.

Respectfully submitted,



Handwritten signature of Jerold L. Jacobs in cursive script, written over a horizontal line.

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Counsel for Lake Broadcasting, Inc.

Dated: April 14, 2016

Att: Exhibit A

DUNCAN-HIVELY PSYCHOLOGICAL SERVICES

*Clinical and Forensic Psychology
Assessment, Counseling and Consultation*

Ann Dell Duncan-Hively, Ph.D., J.D.

Wells Hively, Ph.D.

Summary Assessment of Mr. Rice Report**7 April 2016**

Date of Report: March 14, 2016 Authored by K. Weitzl, Psy.D.

Sex Offender Evaluation on Michael Rice (dob: 6-30-41)

As per your request we reviewed the written report (21 pages) of Dr. Weitzl on Mr. Rice. We conducted a content analysis by counting the number of typed lines devoted to each of the following categories: (1) descriptions of Mr. Rice before he was released from prison in 2000, (2) descriptions of Mr. Rice since he was released, (3) general definitions and information about psychological categories (e.g. Narcissistic Personality Disorder), and (4) her offered opinions and conclusions.

There were some difficulties with the report in general, e.g.:

- Dr. Weitzl often used quotation marks without referencing their sources leaving it uncertain if the quotes were for emphasis or for citation to an unspecified referent.
- At one point she reported that she interviewed Mr. Rice for 1.5 hours (pg. 1) while later she wrote she saw him for 2.5 hours (pg. 11). There is no distinction in her report which information came from her direct interview and which came from other materials.
- She reported that his first sexual experience occurred when he was molested *at age 11 by a 13-year-old male* (pg. 2). However on page 13 she wrote "*His first*

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sexual experience had been when an uncle had sexually abused him when he was 7 years old.” It seemed important to Dr. Weitzl that he had sexual experiences but nothing further was provided (e.g. age that masturbation began, use of magazines for stimulation, age of first intercourse with a female etc.).

The Court order setting the terms for this assessment was not included or referenced even though it was specifically for a psychological examination. Unfortunately Dr. Weitzl administered **no psychological tests**. She did have available all of the raw data and test results from our psychological assessment (Nov. 22, 2014) but she did not utilize these in her analysis. She did not repeat any of the psychological tests. She did calculate the Static 99 (which is not a psychological test). In other words Dr. Weitzl concluded that Mr. Rice currently has a personality disorder without performing any psychological testing.

The justification for the current assessment was to ascertain if Mr. Rice had paid his debt to society and was not a risk for reoffending. The focus for the assessment was to have been from the date of release (Dec. 29, 1999) to current functioning in 2016. She listed letters of reference provided by Mr. Rice but she did not gather any independent collateral information.

Page one of her report simply listed the materials she reviewed. Unfortunately she listed “various Court documents” but did not describe the content or the number of pages. The DSM-V was stated twice.

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We looked for information she used about Mr. Rice prior to his prison release and after his date of release (Dec. 29, 1999). Absent the page of materials reviewed, our calculations on her report were conducted on the remaining 20 pages.

In order to understand our analysis, all lines of type were counted for a total of 744 lines in this report of 20 pages. Each page was analyzed into categories of before 2000 or after 2000 since the Court order was for an assessment of his life since release.

In her report 56 percent of her descriptions dealt with Mr. Rice's life and experiences **before** the year 2000. Only 19 percent of this report dealt with Mr. Rice's life **after** being released from prison. The report contained her opinions at 18 percent while she used definitions and categories at 6 percent.

It appears that Dr. Weitzl failed in her assignment of conducting a psychological evaluation that focused on Mr. Rice's history since he was released having served his allotted time in prison. Instead her unprofessional bias and motivation to denigrate all sex offenders was obvious in her use of inflammatory rhetoric (i.e. "luring"). She included in her report the letters from the families of the victims apparently to emphasize the egregiousness of his conduct for which he served prison time.

It appears from the tone and content of the report that her focus on his history prior to incarceration dominated her so called psychological assessment (56 percent of the report deals with events before 2000). From her point of view Mr. Rice is vermin who got away with illegal behavior and therefore she assumes him to be at high risk of engaging in sexual activity with minors even though he is currently 74 years of age. She of course is a

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mandatory reporter and would be obligated to alert the police if she found evidence for continuing illegal conduct.

She worked hard to dismiss her own summary use of the Static 99 as it placed him in a moderate to low risk of reoffending category. Since she was given carte blanche to test Mr. Rice she could have conducted sexual interest assessment to ascertain whether or not he responds to pictures of naked boys. She also was free to conduct her own psychological evaluation using the available psychological instruments to validate her opinion that he currently suffers from alcohol abuse, narcissistic personality disorder, and/or pedophilia. Instead she committed the error of assuming all those categories still applied rather than actually performing a psychological assessment for his current functioning.

It is our opinion that Dr. Weitzl failed to meet the professional standards required in a forensic assessment and therefore her conclusions that Mr Rice is at high risk to reoffend cannot be trusted or relied upon to form any conclusion about his life between 2000 and 2016. It was not clear whether or not she even conducted a screening of his criminal history to even determine if he had been arrested for anything since 1999.

If you have any questions do not hesitate to contact us.

Ann Dell Duncan-Hively, Ph.D., J.D. Wells Hively, Ph.D.
Licensed Psychologists, Missouri and New Hampshire

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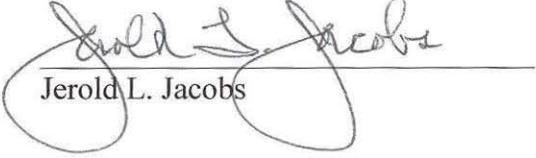
CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 14th day of April, 2016, I filed the foregoing “LAKE BROADCASTING, INC.’S MOTION TO REJECT EXHIBITS, HALT DEPOSITIONS, AND REQUIRE A NEW EVALUATION OF MICHAEL RICE OR GRANT SUMMARY DECISION” 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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