

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

In re: FRANK J. LAWRENCE

Case No.: 4:04mc32


and

FLORIDA BOARD
OF BAR EXAMINERS.

**FLORIDA BOARD OF BAR EXAMINERS' NOTICE
OF SERVICE OF RESPONSE (WITH OBJECTIONS) TO SUBPOENA**

Defendant Florida Board of Bar Examiners hereby gives notice of service by fax and U.S. Mail this 1st day of June, 2004, of this Notice and the attached Response (with Objections) to Subpoena, to Mr. Frank J. Lawrence, Jr., 941 Westview Rd., Bloomfield Hills, MI 48304. The documents being produced are being mailed this date.

Respectfully submitted,



JAMES J. DEAN
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June 1, 2004

Via Fax and U.S. Mail

Mr. Frank J. Lawrence, Jr.,
941 Westview Rd.
Bloomfield Hills, MI 48304

Re: Subpoena for Documents (File No: 89563)
Case No. 4:04-mc-00032-WCS

Dear Mr. Lawrence:

As we have discussed, I represent the Florida Board of Bar Examiners ("the Board") in connection with the subpoena for documents, relating to the matter of *Lawrence v. Van Aken, et al.*, Case No. 4:03-cv-20 (W.D. Mich.), that was mailed to the Board (hereafter, "the subpoena").

Thank you again for your professional courtesy in agreeing to allow an additional ten days to respond to the subpoena. As we discussed, the return date on the subpoena is May 31, 2004, which is a legal holiday. Although I requested the additional ten days, I was able to devote the necessary time to this matter so as to be able to respond within the original return date (i.e., the first business day following the holiday). Please consider this letter as the Board's Response to the subpoena in accordance with Rule 45, Fed. R. Civ. P.

Procedurally, the Board reserves, and does not waive, its objection to the manner of service of the subpoena by mail, rather than by personal delivery. *See, e.g., Parker v. John Doe*, 2002 WL 32107937 (E.D. Pa. 2002); *Terre Haute Warehousing Serv., Inc. v. Grinnell Fire Protection Sys. Co.*, 193 F.R.D. 561, 563 (S.D. Ind. 1999). Subject to and without waiving any objections, however, the Board desires to cooperate with you and provide to you those documents that you have requested and which the Board is authorized to disclose, provided production of such documents will not impose an "undue burden or expense" on the Board. Rule 45(c), Fed. R. Civ. P.

We interpret your subpoena to be requesting documents constituting, or containing the substance of, communications with the individuals described in the subpoena to the extent any such

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communications relate to your application for admission to the Michigan Bar and/or your application for admission to the Florida Bar. The Board's Response is thus based on this understanding.

I have enclosed copies of the following letters contained in the Board's file:

- A-1. Letter from Attorney Grievance Commission dated June 25, 2002 (1 page).
- A-2. FAX transmission dated April 30, 2003 from the Board to the MI Attorney Grievance Commission (1 page) with apparent enclosures consisting of the Board's letter dated April 30, 2003 (1 page) and Authorization and Release (1 page).
- A-3. Facsimile transmission dated April 30, 2003 from the MI Attorney Grievance Commission consisting of a cover sheet (1 page) and letter (1 page).
- A-4. Second FAX transmission dated April 30, 2003 from the Board to the MI Attorney Grievance Commission (1 page) with apparent enclosures consisting of the Board's letter dated April 30, 2003 (1 page) and Authorization and Release (1 page).
- A-5. Letter of Attorney Grievance Commission dated April 30, 2003 (1 page).
- A-6. FAX transmission dated November 6, 2003 from the Board to the MI Attorney Grievance Commission (1 page) with apparent enclosures consisting of Board's letter dated November 6, 2003 (1 page) and Authorization and Release (1 page).
- A-7. Letter of Attorney Grievance Commission dated November 6, 2003 (1 page).

During the course of your background investigation, the Board requested and received a copy of your Michigan bar application file. You also authorized the Board to provide the Michigan Bar with a copy of your Florida bar application. I am including copies of the following correspondence relating to this exchange of bar application materials between the Board and the Michigan Bar:

- B-1 Board's letter dated May 23, 2002 to the State Bar of Michigan (1 page).
- B-2 Letter of the State Bar of Michigan dated August 14, 2002 (1 page).

After a search of the Board's file, we were unable to locate copies of the Board's letters that prompted the sending of A-1 and B-2. It is assumed that they were computer-generated letters

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similar to the Board's letter dated April 30, 2003 in A-2.

I have not enclosed copies of the materials received by the Board relating to your Michigan bar application file because they are quite voluminous. These materials consist of your Michigan bar application and amendments, correspondence between you and the Michigan Bar, litigation documents and investigative letters (e.g. letter dated June 19, 2001 from the State Bar of Michigan to the Michigan Attorney General's Office requesting employment-related information). If you do wish to inspect these materials consisting of your Michigan bar application file, then we will need to make arrangements for you to inspect them at the Board's administrative offices in Tallahassee. If you wish copies of any of these documents, then we will need to agree upon a reasonable charge for copies of these documents.

The Board's file contains copies of the following documents received from the Michigan Attorney Grievance Commission pertaining to your grievance against John A. Taylor: Request for Investigation of Attorney with attachments consisting of applicant's letter dated September 14, 2000, a Hotmail from Helena Christine Lawrence, handwritten letter by Chris Lawrence, and handwritten letter by Mrs. Lawrence (7 pages); Answer to Request for Investigation dated October 26, 2000, with attached letter of John R. Slevin with enclosures (102 pages); transcript of Preliminary Examination held September 14, 2000 (64 pages); and letter dated November 6, 2000, from the Michigan Attorney Grievance Commission (2 pages). I assume that you have copies of these documents in that they involve a complaint made by you. If, however, you do wish to inspect these materials, then we will need to make arrangements for you to inspect them at the Board's administrative offices in Tallahassee. If you wish copies of any of these documents, then we will need to agree upon a reasonable charge for copies of these documents.

We understand that all of the above-listed items would be independently available to you from the State Bar of Michigan and the Michigan Grievance Commission, and these documents are being made available to you pursuant to Rule 1-63.6 of the Rules of the Supreme Court Relating to Admissions to the Bar (hereinafter "the Rules").

To the extent the Board is in possession of documents other than those identified above, which are within the scope of the subpoena, the Board interposes an objection to producing such documents, pursuant to Rule 45(c), F. R. Civ. P. and Rule 501, F. R. Evid., on the ground that the documents are entitled to be accorded a privilege from discovery or are otherwise protected from disclosure. Additionally, it is not readily apparent how documents relating to your application for admission to the Florida Bar would be relevant to your action against Ms. Van Aken and Ms. Armbrustmacher in Michigan.

The documents that are being withheld would include correspondence from persons identified in the subpoena (other than from the State Bar of Michigan, Van Aken or Armbrustmacher) received by the Board in accordance with the confidentiality provision of Rule 1-

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60 of the Rules of the Supreme Court Relating to Admissions to the Bar.¹ It is the Board's position that such correspondence is the type of material that is entitled to protection from disclosure under the provisions of Federal Rule of Evidence 501, for the reasons explained by the Florida Supreme Court in its decision in *Florida Board of Bar Examiners re Interpretation of Article, I, Section 14d*, 581 So. 2d 895 (Fla. 1991):

This Court takes seriously its responsibility of supervising the admission of persons to the practice of law in Florida. Pursuant to its directions, the board conducts a careful character and fitness investigation of each applicant. As a consequence, it is necessary that the board seek information from numerous sources. The Court is concerned that unless the board's investigative files are held in confidence, many of those from whom the board seeks information concerning applicants would be unwilling to candidly respond. Thus, by its promulgation of article I, section 14 [currently Rule 1-60] the Court made a calculated decision that the board's records should be confidential except under certain limited circumstances.

Id. at 897. See also *Florida Board of Bar Examiners re Amendments to the Rules*, 676 So. 2d 372 (Fla. 1996) (reiterating importance of rule of confidentiality for obtaining candid evaluations and comments necessary to attorney admission process). These documents are entitled to a privilege from discovery in accordance with the same principles which undergird the official information privilege for confidential government information received from third parties and the self-critical analysis privilege, which have been recognized under Rule 501.²

The Board is also withholding internal memoranda exchanged between the Office of General

¹ Rule 1-60 provides that "all information maintained by the Board in the discharge of those responsibilities delegated to it by the Supreme Court of Florida shall be confidential except as provided by these Rules or otherwise authorized by the Court." Thus documents may be disclosed when authorized by the Supreme Court. The Rule also provides for disclosure of documents with the consent of the party who submitted the documents to the Board (Rule 1-63.6); and documents formally introduced into the record at an investigative or formal hearing will be disclosed to the applicant at the applicant's request. Rule 1-63.5. In the absence of authorization by the Supreme Court or a provision of the Rule, the Board is prohibited from disclosing documents it possesses as custodian of documents for the Supreme Court of Florida.

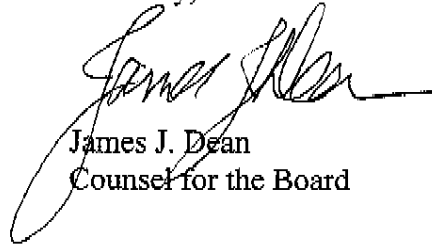
² I have not identified which of the persons identified in your subpoena have provided correspondence to the Board, on the ground that this would violate the Supreme Court's rule regarding confidentiality. However, I can confirm for you that we are not withholding any correspondence with the State Bar of Michigan, Ms. Van Aken or Ms. Armbrustmacher relating to your applications for admission.

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Counsel and an analyst relating to your application for admission (dated April 2003, May 2003 and July 2003) and an internal phone message memo regarding a contact with the Michigan Grievance Commission on April 30, 2003. These matters are confidential in accordance with the Rule 1-60, and should likewise be accorded a privileged or protected status under Rule 501 based on the considerations reflected in the decision of the Florida Supreme Court in *Florida Board of Bar Examiners re Interpretation of Article, I, Section 14d*, 581 So. 2d 895 (Fla. 1991). These matters are also subject to protection from disclosure as reflecting internal work product of the Board's Office of General Counsel and/or as attorney-client communication and/or based on principles of the deliberative process, official information and judicial privileges.

Should you have any questions regarding this Response, you may contact me in writing at the address at the top of the letterhead.

Sincerely,



James J. Dean
Counsel for the Board

Enclosures: A-1 through A-7.; B-1 and B-2.

cc: without enclosures:

Eleanor Mitchell Hunter, Executive Director, Florida Board of Bar Examiners
Thomas A. Pobjecky, Office of General Counsel, Florida Board of Bar Examiners