

June 3, 2004

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

Dear Mr. Dean:

You did an excellent job of appearing to cooperate with the subpoena, yet we both know that the documents that I am seeking (and necessary to my pending civil rights action) are the same documents that you are presently refusing to disclose.

As you acknowledge in your correspondence, all of the records that you provided to me are documents that are already in my possession or they are independently available to me from various sources. You assert claims of “privilege,” yet the only authority that you cite involve state citations recognizing “confidentiality.” I also find it troubling that you failed to distinguish, let alone address, Lawrence v. Van Aken, ___ F.Supp.2d ___ (W.D. Mich. 2004); 2004 WL 855774 (W.D. Mich.); 2004 U.S. Dist. LEXIS 6878 (W.D. Mich., April 4, 2004), a case directly on point that I provided to you via fax. State statutes or rules providing for duties of confidentiality do not automatically imply the creation of evidentiary privileges that are binding on the federal courts. Id. at ___; 2004 WL 855774 at *6.

I am not interested in obtaining internal memoranda merely relating to communications between the staff of the Florida Board of Bar Examiners. I am exclusively seeking investigative information. Therefore, the large portion of your letter dedicated to “internal memoranda exchanged between the Office of General Counsel and an analyst” is of no relevance to this matter.

You also cite Florida Board of Bar Examiners re Interpretation of Article, I, Section 14d, 581 So.2d 895 (Fla. 1991) for the proposition that the Board’s files should be “held in confidence” because, otherwise, individuals “would be unwilling to candidly respond” to the Board’s inquiries. You should know that this argument was considered and flatly rejected by the United States Court of Appeals for the Seventh Circuit in EEOC v. Illinois Dep’t. of Employment Sec. 995 F.2d 106, 108-109 (7th Cir. 1993).

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Perhaps most alarming, you do not address the Board's substantial interest and motivation in not cooperating with the subpoena. My application has been pending in front of the Board for over 31 months, constituting an egregious due process violation. The Board recently filed "specifications" against me for filing suit against Ms. Van Aken and the Board intends to haul me down to Florida to explain the basis for this case. Given these facts, it is not in the Board's interest to turn over relevant information that could assist me in litigating a case in which the Board has already decided warrants the filing of "specifications." Simply put, by not disclosing the documents, the Board's interests are furthered.

Pursuant to Local General Rule 7.1(B), please allow this letter to serve as my good faith attempt to seek your concurrence in enforcing the subpoena. Additionally, I would also like to seek your concurrence in requesting costs and sanctions against your client on account of her bad-faith refusal to cooperate. Lastly, I hereby seek your concurrence with a request for sanctions against you and your law firm, pursuant to 28 U.S.C. §1927, for vexatiously multiplying the proceedings in this case. Please contact me, via fax or phone, by June 7, 2004.

Sincerely,

s/ Frank J. Lawrence, Jr.