



State Bar of Michigan

Michael Franck Building
306 Townsend Street
Lansing, Michigan 48933-2083
Telephone: (517) 346-6300 or (800) 968-1442
Fax: (517) 482-6248

October 8, 2003

United States Court of Appeals
For The Sixth Circuit
532 Potter Stewart U.S. Courthouse
100 E. Fifth St.
Cincinnati, Ohio 45202-3988

In Re: E. Stephen Dean v. Thomas K. Byerley
Case No. 02-1421

Dear Clerk:

Enclosed for filing please find the following:

1. Appellee Thomas K. Byerley's Correction of a Misstatement in the Record and Response to Appellant's Citation of Supplemental Authorities
2. Proof of Service

I have also enclosed an extra copy that can be time stamped and returned to me in the self-addressed envelope.

Thank you for your attention to this matter, and do not hesitate to call if you have any questions.

Sincerely,

Victoria V. Kremski

Victoria V. Kremski
Assistant Regulation Counsel

VVK/kss
Enclosure

cc: E. Stephen Dean ✓



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

E. STEPHEN DEAN

Case No. 02-1421

Plaintiff-Appellant

On appeal from the U.S.
District Court, Western
District of Michigan,
Lower Court # 01-CV-40

v.

THOMAS K. BYERLEY, individually and
in his official capacity

Defendant-Appellee

APPELLEE THOMAS K. BYERLEY'S
CORRECTION OF A MISSTATEMENT IN THE RECORD
AND RESPONSE TO APPELLANT'S CITATION
OF SUPPLEMENTAL AUTHORITIES

Victoria V. Kremski
Attorney for Appellee
State Bar of Michigan
306 Townsend Street
Lansing, MI 48933
(517) 346-6310

Appellee, Thomas K. Byerley, pursuant to Fed. R. App. P. 16(b), files this Correction of a Misstatement in The Record and Response to Appellant's Citation of Supplemental Authorities, stating as follows:

1. On approximately September 8, 2003 Appellant-Dean filed a Citation of Supplemental Authorities seeking to introduce new evidence into the record and make a legal argument he had not previously made.
2. Appellee-Byerley assumes Appellant-Dean consents to the filing of this Correction of a Misstatement in the Record pursuant to Fed. R. App. P. 16(b) as Appellant-Dean basically seeks to do the same by introducing new evidence into the record through his Citation of Supplemental Authorities.
3. Although Appellant-Dean does not contend that Appellee-Byerley did anything improper to deny Appellant-Dean admission to the State Bar of Michigan ¹ the question of the nature and extent of Appellee-Byerley's participation in the admissions process was raised as an issue at oral argument in discussing whether Appellee-Byerley could be deemed as acting "under color of law" in the alleged circumstances set forth in Appellant-Dean's complaint.

¹ Order Granting Motion in Limine, 8/23/01, Docket Sheet # 50

4. In the brief and at oral argument, counsel for Appellee-Byerley asserted that Appellee-Byerley has no ability to influence the admission decision and “is not involved in the admission process.”

5. At the time of the submission of the brief and oral argument, counsel for Appellee-Byerley was unaware that Appellee-Byerley had a limited role in the admissions process, as outlined in detail in the attached Affidavit of Diane Van Aken, Exhibit A.] Counsel further discovered that there is a wide range of latitude for the lawyer supervisor of the State Bar of Michigan Character and Fitness Department to become involved in the admissions process, as also outlined in Ms. Van Aken’s affidavit. [Affidavit of Diane Van Aken, Exhibit A]

6. Counsel’s intent is to clarify the record to ensure that the Court has a precise understanding of the admission process and Appellee-Byerley’s relationship to it, given the extensive discussion at oral argument about whether Appellee-Byerley could be deemed to be a state actor under the alleged circumstances set forth in Appellant-Dean’s complaint.

7. Appellant admits that Mr. Byerley “did not do or would do anything improper to deny Appellant admission to the State Bar or that if Appellant was not admitted to the State Bar it would be because of any misconduct of Appellee” [sic]. Indeed, Appellant-Dean withdrew his application to the State Bar of Michigan before it could be referred to a

District Committee for review. [Affidavit of Diane Van Aken, Exhibit A, attached.]

WHEREFORE, Appellee-Byerley requests that this Court accept this Correction of a Misstatement in the Record and Response to Appellant-Dean's Citation of Supplemental Authorities and bring this Correction to the attention of the panel considering this matter.

October 8, 2003

By: Victoria V. Kremski
Victoria V. Kremski
Attorney for Appellee
State Bar of Michigan
306 Townsend Street
Lansing, MI 48933
(517) 346-6310

AFFIDAVIT

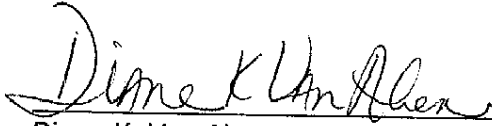
I, Diane K. Van Aken, state:

1. I have been employed by the State Bar of Michigan since November 1989.
2. I am the manager of the Character and Fitness Department, and have been so since 1997. I was co-manager of the department from approximately 1995 until 1997.
3. I have been asked to prepare this affidavit to explain staff involvement in the State Bar of Michigan character and fitness process, and to assist in correcting statements made in Appellee's brief and on the record at oral argument that Appellee, Thomas Byerley, is not involved in the admissions process.
4. Rule 15, Section 1, Supreme Court Rules Concerning the State Bar of Michigan, (3) states: "The State Bar of Michigan shall assign staff to assist the standing and district committees in the discharge of their duties."
5. The duties of the standing and district committees are outlined in Rule 15, Section 1, (2), attached.
6. Character and Fitness department staff is charged with the responsibility of the Standing Committee to investigate the conduct of applicants for admission to the bar.
7. Rule 15, Section 1, (5) (a) provides that "An applicant shall be recommended favorably by State Bar staff without referral to committee when investigation of all past conduct discloses no significant adverse factual information."
8. In all other cases, an applicant is referred to a district committee for interview to determine whether the applicant should be recommended to become a member of the State Bar of Michigan. The district committee prepares a written report and recommendation to the Standing Committee on each applicant referred to them following the conclusion of applicant's interview. The recommendation is forwarded to me, and I prepare a report, called an endorsement report, that summarizes the recommendations for the Standing Committee.
9. To assist staff in providing this information to the Standing Committee, Rule (C) (1) of the Standing Committee Rules of Procedure provides that: "The State Bar staff shall review each report of a district committee and advise the Standing Committee (a) whether each issue in the Notice of Referral has been addressed, (b) whether additional information has been received which was not a part of the district committee report, and (c) whether the recommendation is consistent with previous determinations of the Standing

Committee and the State Board of Law Examiners regarding similar conduct."

10. Character and Fitness department staff has historically included in the report a recommendation as to whether staff agrees or disagrees with the district committee report, based on its knowledge of the file, and whether the type of issues considered have previously warranted a hearing by the Standing Committee. I draft this report and distribute it to regular (voting) members of the Committee.
11. There is a wide range of latitude for the lawyer supervisor of the Character and Fitness Department to become involved in the admissions process, including the determination of whether applicants should be referred for interview or recommended for hearing, and reviewing reports. Historically, the range of involvement of the lawyer supervisor of the Character and Fitness Department in the admissions process has varied. Within this range, Mr. Byerley's involvement has been minimal.
12. Regulation Counsel Thomas Byerley became my supervisor in 1997, and is currently the Director of the Professional Standards Division of the State Bar of Michigan. The Character and Fitness Department is one of the departments in the Professional Standards Division.
13. Mr. Byerley provides guidance to the staff of the Character and Fitness department when asked, about legal issues and concepts, concerns about information provided by the applicants, and/or appropriate areas of inquiry. On rare occasions, Mr. Byerley has reviewed reports of the district committee to the Standing Committee, and he has also reviewed, from time-to-time, reports of the Standing Committee to the Board of Law Examiners. Mr. Byerley has occasionally served as State Bar counsel during Standing Committee and Board of Law Examiners hearings. Mr. Byerley does not review the endorsement reports before they are distributed to the Standing Committee regular members unless asked.
14. Mr. Byerley does become involved in the character and fitness process in the event of litigation concerning a bar applicant.
15. Earl Stephen Dean withdrew his application on June 22, 2001, before the District Committee had an opportunity to conduct an interview. Therefore, a report and recommendation to the Standing Committee was not prepared.
16. I have personal knowledge of the facts contained in this affidavit.

October 8, 2003


Diane K. Van Aken