



# 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

December 19, 2003

Clerk  
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. **Motion by Victoria V. Kremski to File, Upon Court Request, a Disclosure of Facts Not Previously Supplied To The Court**
2. **Withdrawal and Substitution of Counsel for Appellee**
3. **Appearance of Counsel**
4. **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 ✓  
John R. Oostema  
Jon D. Vander Ploeg



Supporting access to justice for all.

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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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

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**MOTION BY VICTORIA V. KREMSKI  
TO FILE, UPON COURT REQUEST, A DISCLOSURE OF FACTS  
NOT PREVIOUSLY SUPPLIED TO THE COURT**

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

Victoria V. Kremiski, former counsel for Appellee, pursuant to Fed. R. App. P.

27(a) submits this Motion to File, Upon Court Request, A Disclosure of Facts Not Previously Supplied to the Court, stating as follows:

1. The movant is former counsel for Appellee.

2. On October 9, 2003, Appellee filed with this Court a Correction of Misstatement of the Record. The filing corrected the undersigned's statements in the brief and at oral argument that Appellee had no role in the State Bar of Michigan's admissions process.

3. The Correction accurately reported that there is a wide range of latitude in which Appellee may become involved in the admissions process, including the determination of whether applicants should be referred for interview or recommended for hearing. The undersigned characterized Appellee's involvement in the admissions process as "limited." Diane Van Aken, in her affidavit attached to the Correction, characterized Appellee's involvement as "minimal."

4. After further discovery and reflection, the undersigned is concerned that the question of what constitutes "limited involvement" may speak to the ultimate question on appeal - i.e. whether Appellee is a "state actor" under § 1983. The undersigned is also concerned that it is the sole province of this Court to determine what constitutes "limited involvement" based on the facts, and that it may not be appropriate for the undersigned to proffer a characterization of facts, without fully detailing the facts on which the characterization is based.

5. The undersigned recognizes that the submission of new facts at this point in the appellate process is highly unusual, but believes that she is required, under her

ethical duties of candor to the Court, to provide the Court with the opportunity to hear any undisclosed facts that it may believe relevant to the determination of the issue on appeal.

Wherefore, the undersigned requests that this Court consider this Motion to File, Upon Court Request, A Disclosure of Facts Not Previously Supplied to the Court.

December 19, 2003

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

UNITED STATES COURT OF APPEALS  
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Defendant-Appellee

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WITHDRAWAL AND SUBSTITUTION OF COUNSEL FOR  
APPELLEE

Withdrawal

Victoria V. Kremski, attorney of record for Appellee, Thomas K. Byerley,  
hereby withdraws as counsel for Appellee in this matter.

December 10, 2003

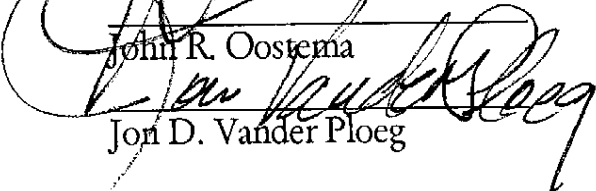
Victoria V. Kremski  
Victoria V. Kremski  
Attorney of Record for Appellee

Appearance

John R. Oostema and Jon D. Vander Ploeg hereby enter their appearance on behalf of Appellee Thomas K. Byerley in this matter.

December 15, 2003

  
\_\_\_\_\_  
John R. Oostema

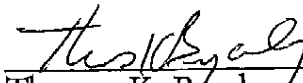
  
\_\_\_\_\_  
Jon D. Vander Ploeg

Smith Haughey Rice & Roegge P.C.  
250 Monroe Avenue NW  
Suite 200  
Grand Rapids, MI 49503

Consent

I, Thomas K. Byerley, consent to the withdrawal of Victoria V. Kremiski and to the substitution of John R. Oostema and Jon D. Vander Ploeg as counsel of record on my behalf.

December 10, 2003

  
\_\_\_\_\_  
Thomas K. Byerley

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

APPEARANCE OF COUNSEL

IMPORTANT NOTICE:

Lead counsel must be designated if a party is represented by more than one attorney or law firm. While the Clerk's office will accept documents from any attorney who has entered an appearance and has been admitted to the Bar, only lead counsel will be on the court's service list. It is the responsibility of lead counsel to advise co-counsel of court deadlines, orders, notice of argument, decisions and any other case related activity. If counsel fails to designate lead counsel or designates more than one attorney as lead counsel, the Clerk's office will designate without notice. This policy will be strictly enforced.

COA Case No. 02-1421

Client's Name: Thomas K. Byerly

Appellant                       Petitioner                       Amicus Curiae   
Appellee                       Respondent                       Intervenor   
  
*I AM LEAD COUNSEL*                       OR                      *CO-COUNSEL*

Name: John R. Oostema                      Admitted: 8 / 30 / 82

Signature: \_\_\_\_\_

Firm Name: Smith Haughey Rice & Roegge

Business Address: 250 Monroe Avenue

Suite: 200                      City/State/Zip: Grand Rapids, MI 49525

Telephone Number: (Area Code) (616) 774-8000                      Fax: (616) 774-2461

Remarks: Each attorney must file his/her own appearance and must be attentive to the designation as to whether he/she is lead counsel or co-counsel, sign the form and include an approximate date of admission.

FORM MUST BE SERVED ON OPPOSING COUNSEL

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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Plaintiff-Appellant

On appeal from the U.S.  
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v.

THOMAS K. BYERLEY, individually and  
in his official capacity

Defendant-Appellee

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**PROOF OF SERVICE**

I, Karen Spohn, say that on the 19<sup>th</sup> day of December, 2003, I served a copy of **Motion by Victoria V. Kremski to File, Upon Court Request, a Disclosure of Facts Not Previously Supplied To The Court, Withdrawal and Substitution of Counsel for Appellee, Appearance of Counsel and this Proof of Service** on the following by placing same in an envelope(s) properly addressed and depositing the envelope(s) in the United States mail, with first class postage therein.

E. Stephen Dean  
P.O. Box 308  
Piedmont, MO 63957


John R. Oostema  
Attorney at Law  
Smith Haughey Rice & Roegge P. C.  
250 Monroe Avenue NW  
Suite 200  
Grand Rapids, MI 49503

Jon D. Vander Ploeg  
Attorney at Law  
Smith Haughey Rice & Roegge P. C.  
250 Monroe Avenue NW  
Suite 200  
Grand Rapids, MI 49503

I hereby declare that the statement above is true to the best of my knowledge, information and belief.

DATE: 12-19-2003

  
Karen Spohn

NOTARY   
"Subscribed to and sworn before me  
this 19<sup>th</sup> day of December 2003."

GLORIA JONES, Notary Public  
Ingham County, Michigan  
My Commission Expires December 25, 2005