

**Before the  
Federal Communication Commission  
Washington, DC 20554**

**FCC 15M-30**  
10454

In the Matter of	)	MB Docket No. 14-82
	)	
<b>PATRICK SULLIVAN,</b>	)	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 Station W238CE,	)	
Montgomery, Alabama	)	

**ORDER**

**Issued:** November 23, 2015

**Released:** November 23, 2015

The Presiding Judge issued his *Order* FCC 15M-26 on August 4, 2015. Considered were Enforcement’s Bureau Motion to Permit Examination by Expert Psychologist (“Motion”). The Bureau relied on Section 1.311(b) of Commission Rules which provides that “[p]ersons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues.” Lake Broadcasting acknowledges the Rule, recognizes the Bureau’s right to an interview by psychologist, but insisted on conditions limiting the scope of questions, permitting a Lake Broadcasting psychologist to attend, and requiring a transcription of the interview. In *Order* FCC 15M-26, the Presiding Judge explicates his reasons, based on ample pertinent authority, for granting “unconditionally” the Enforcement Bureau’s Motion. *Id.* That ruling will not be revisited.

On August 18, 2015, Lake Broadcast, Inc. filed Motion for Protective Order pursuant to Section 1.313 of the Commission’s Rules. While negotiating a time schedule for the psychologist’s interview by the Bureau and subsequent deposition by Lake, Lake Broadcasting’s counsel received and read *Order* FCC 15M-26. Then counsel conducted a first-time Lexis search. He discovered twenty past court decisions in which the Enforcement Bureau’s psychologist had participated. Lake Broadcasting cites just one unresolved allegation for authority opposing the Bureau<sup>1</sup> (0.05% of 20 cases). From this Lake Broadcasting asks the Presiding Judge to find “apparent bias in her reports against criminal rehabilitation.” Based on such “just-discovered research”, Lake Broadcasting again requests that the interview be recorded but now bases its request on Section 1.313, the provision for protective order.

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<sup>1</sup> *Smego v. Weith*, 2013 U.S. Dist. Lexis 66796 (May 2013)

There is no basis under Section 1.313 to revisit *Order* FCC 15M-26 in reliance on a party's inconclusive "just discovered research."<sup>2</sup> Lake Broadcasting presents a classic case of "too little, too late." In any event, as the Enforcement Bureau properly pleads, neither Lake Broadcasting's allegations of dilly-dally, nor its hapless authority for a transcription of interview, amount to "annoyance, expense, embarrassment or oppression" in the ways specified in Section 1.313.

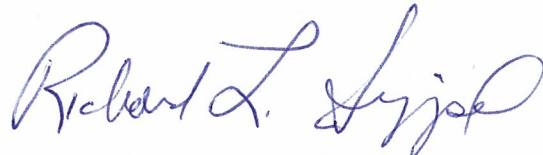
In another twist, the Bureau treated Lake Broadcasting's Motion for Protective Order as an unauthorized appeal under Section 301(b) of the Rules, a provision never cited by Lake, which lead to uninvited "Comments" wherein Lake Broadcasting notes the Bureau's misdesignation. But, there is still no basis found in law, fact or equity for the special writ of Protective Order. So the Motion to Strike filed by the Enforcement Bureau on September 2, will not be considered since it is now moot.

### *Rulings*

Accordingly, IT IS ORDERED that the Enforcement Bureau and Lake Broadcasting, Inc. shall file a Joint Status Report by **December 2, 2015**, setting forth (1) the date, time and place for an Unconditional Interview by Dr. Kimberly Weitzl of Mr. Rice at her professional convenience, and (2) the date, time and place of the Deposition of Dr. Kimberly Weitzl by Lake Broadcasting at her professional convenience.

IT IS FURTHER ORDERED that Lake Broadcasting, Inc.'s Motion For Protective Order Pursuant to Section 1.313 of the Commission's Rules filed on August 18, 2015, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Chief Administrative Law Judge

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<sup>2</sup> Lake Broadcasting also makes reference to "dilly-dallying" by the Enforcement Bureau in connection with scheduling discovery of its psychologist after a yet-to-be conducted interview. That alleged scenario presents a "he said, she said" situation and will not be considered. As court officers, counsel are expected to work out scheduling without further dilly-dally.