In The
Supreme Court of Mississippi

SC Case No. 2006-SA-01610
Chancery Ct. No. G2005-2040 O/3

E. Stephen Dean

Appellant,

v.

Mississippi Board of Bar Admissions

Appellee.

REPLY BRIEF OF APPELLANT E. STEPHEN DEAN

CERTIFICATE OF SERVICE

Submitted by:

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Oral Argument Requested

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INTRODUCTION

Applicant E. Stephen Dean (hereinafter "Dean") has alleged throughout his application process that Mississippi lacks the necessary guidelines, as required by law, to provide licensing applicants reasonable notice of what standards precisely apply to their conduct. The Board clearly has accepted Dean's position by their complete and total failure to offer, in their Brief Of The Appellee, any existing Mississippi law that refutes Dean's allegation. The Board not only fails to offer any Mississippi law but it immediately asks this Court to look to the standards set forth in **Massachusetts** (Board's brief, p. 11, 14, 21, 22), **Nebraska** (Id. at p. 8, 11, 12, 14, 20, 22), **Oregon** (Id. at p.), **Ohio** (Id. at p. 9), **Georgia** (Id. at p. 9), **North Carolina** (Id. at p. 10), **Illinois** (Id. at p. 22), **Iowa** (Id. at p. 16), **North Dakota** (Id. at p. 17), and **Arkansas** (Id. at p. 6).

Clearly, the Board's assertion that this Court and Dean must look to the laws of states other than Mississippi is ridiculous, unless the Board can prove that Dean was timely notified by them that the rules and laws of states other than Mississippi would apply to his particular application for a license to practice law in the Great State Of Mississippi.

For example, there is no law nor rule in Mississippi governing attorney licensing stating that an applicant may be denied a license for filing lawsuits or publicly speaking out against the Board or members of this Court.

Furthermore, where in the Mississippi rules governing attorney licensing does it state that Board members have the right to retroactively reevaluate an applicant's litigation history and determine 5 or 10 years after a legitimate court had finalized the litigation that it was "frivolous", especially when no one during that litigation ever claimed that it was? Again, the Board has already impliedly conceded that no authority for their position exists in Mississippi. Case in point, Dean has been denied the ability to sit for the Bar exam because the Board members have portrayed him as a troublemaker for them. There is no evidence in the record before this Court that Dean, having exercised his First Amendment Freedom of Speech and his Right To Petition The Government For A Redress of Grievances, has resulted in a threat to the Board, this Court, or to the public. A review of the Board's record clearly reveals that their entire position constitutes nothing more than retaliation by them against Dean because of his lifelong practice of standing up against morally corrupt officials, such as themselves, who punish anyone who disagrees with their personal beliefs, when those same officials should instead be spending their time publicly demonstrating their fidelity to the law.

I. THE FINDING THAT DEAN WAS DISHONEST WAS ARBITRARY AND UNSUPPORTED.

Ironically, **Mississippi Board of Bar Admissions Chairman James R. Mozingo and Board Members Pieter Teeuwissen, Clyde H. Gun, III, H.**

Hunter Twiford, III, Jay Paul Carmean, Karen K. Sawyer, Michael E. Barefield, Kay L. Trapp, and John Doe are liars. They begin their Appellee's Reply Brief by advancing a lie that is easily disproved: "Although he did not assert it as one of his "Issues for Review" before the chancery court, (C.P. Vol. 1, pp. 7-8), Dean complains that the chancery court failed to address the Board's findings that Dean had been dishonest and asks this Court to review the Board's findings" (Board's brief, p. 7). The Board then claims that this alleged "waiver" should preclude this Court's review. **The utter dishonesty and frivolousness of the Board and its individual Members' position is demonstrated by a cursory review of Dean's chancery court brief.** In Dean's Chancery Court brief, he specifically challenged the Board's finding that Dean made misrepresentations. Dean further defended his litigation statements in Dean v. Byerley, 354 F.3d 540 (6th Cir. 2004). **Therefore, the Board's "waiver" arguments are baseless lies.**

Unfortunately, the lies do not end there. The Board continues its pattern of false litigation statements when it alleges on page 7 of its brief that "Dean failed to disclose that he had been placed on probation by Thomas Cooley Law School for failing to disclose a prior criminal conviction." **Dean urges this Court to cross-reference the Board's statement with the record.** The Board has obviously misrepresented why Dean was placed on academic probation. The record shows that Dean was placed on academic probation for low grades not, as the Board

alleges, because he failed to inform the school of the 30-plus year-old DUI conviction that he received (something the record shows that Dean voluntarily corrected by personally bringing this information to Cooley's attention – completely on his own initiative – without any discipline by the school). **Lies like this by the Board are spread throughout the Board's brief to this Court, which may make the Board's arguments extremely difficult to be taken seriously by this Court.**

The Board accuses Dean of "glossing over" various things that the Board refers to as "omissions", but a review of those items reveals that they are completely irrelevant to the issue of character. For example, the Board accuses Dean of failing "to disclose that he also studied at William Howard Taft University Law School" (emphasis added, Board's brief, p. 7). Dean's only connection with the **correspondence-only law school** was Dean's taking of a *correspondence course*. However, the Board's opinion carefully omits this fact. A more important question must be asked, however: So what? Nowhere does the Board allege that Dean engaged in any misconduct in connection with his correspondence class; nowhere do they allege that Dean failed to pay his bill, cheated in any way, or engaged in any other type of academic misconduct. Therefore, it is obvious that the Board Members have used every miniscule example they can dredge up or concoct in order to further the real reason for rejecting Dean's character. **The**

Board Members simply do not like Dean because they do not agree with his public pro Christian activities of highlighting conduct believed by him to clearly demonstrate legal corruption in the state bars and the judiciary.

Realizing that it has provided this Court with questionable examples, the Board then tells this Court that "it is not necessary that the Board find an intent to deceive" (Board's brief, p. 8). **That is complete unadulterated nonsense offered by a board that has ordained itself to be the judge in deciding if others possess the integrity and honesty to be allowed by these Board Members to practice law in the Great State Of Mississippi.** The law of this state is completely the opposite of what the Board Members claim. See, e.g., Mississippi Bar v. Land, 653 So. 2d 899, 909 (Miss. 1994) and Mississippi Bar v. Mathis, 620 So. 2d 1213, 1220 (Miss. 1993).

Next, the Board again belabors the independent contractor work that Dean did for a number of insurance companies, and alleges that their failure to renew Dean's contract should have been disclosed. First, Dean should not be faulted because he decided to err on the safe side and report the independent contractor work on his application. Secondly, **even Mr. Storlie, Attorney for Illinois Mutual Life Insurance Company testified at Dean's August 2005 Hearing that Dean was and independent contractor and was never an employee of Illinois Mutual.** It is not open to dispute that Dean did his job to the best of his ability as

an **independent self-employed agent**. He did not steal from Illinois Mutual, cheat in any way, or engage in any misconduct. Most importantly, Mr. Storlie, Attorney for Illinois Mutual Life Insurance Company testified at the Board's hearing:

> **He was terminated for lack of production, which is not uncommon** in terms of when you're dealing with a lot of insurance agents. So over time, they may stop producing business for you, and we ultimately terminate them because of lack of production.

(hearing transcript, p. 141, emphasis added)

Given that Dean's sales contract as an independent agent was not renewed (nor was any proof offered that he asked for it to be renewed) because of "lack of production, which is not uncommon", the Board's decision to use this as evidence demonstrates how bereft its Members are of any morality or legitimate reason to deny his request to become licensed.

Finally, Dean believes that the last reason provided by the Board – Dean's lawsuit against Thomas Byerley – is the real reason why the Board decided to target Dean and retaliate against him. Dean was the first person in U. S. history to defeat an attorney licensing official's claim to absolute immunity (a frivolous argument that the Board members in Mississippi are presently alleging in the federal suit brought by Dean). Dean's success in Dean v. Byerley, 354 F.3d 540 (6th Cir. 2004) was a major victory for all attorney licensing applicants in this nation. On the other hand, however, **James R. Mozingo and his Board Members despise the Sixth Circuit's decision, and are determined that Dean is going to**

pay the price in the Great State Of Mississippi by being refused a license to practice law because he has conducted himself as a Christian should by publicly bringing attention to corruption he believes is in the legal system.

To be clear, **Dean made no false statements** in the Dean v Byerley case, and the Board's attempt to rehash that decision is improper and ill advised (for reasons that will become clear during the federal litigation between Dean and the Board members). Dean has explained the story over and over, yet the Board has still refused to acknowledge that they have twisted the facts. But, assuming for the sake of argument that Dean did picket the private individual, non state actor, Nussbaumer's home on March 28, 2001 **after** he picketed the Byerley residence (something that is completely untrue), it would not have changed the result in the case *in any way*. The issue before the Court was whether a person who acts under color of state law can violate the First Amendment. Obviously someone who is not acting under color of state law (i.e., Mr. Nussbaumer was not a state actor) could not create a chilling effect under Section 1983; only a state actor may be subject to a cause of action. Therefore, the Board's argument is a ridiculously insignificant point.

II. MISSISSIPPI LAW DOES NOT PERMIT THE BOARD TO CONDUCT AN AFTER-THE-FACT REVIEW OF AN APPLICANT'S LITIGATION HISTORY, AND THEN MAKE A DETERMINATION – 5 OR 10 YEARS LATER – THAT THE LITIGATION WAS IMPROPER.

The Board's brief simply reiterates the same old arguments that it made in its opinion, while failing to honestly address the important points made in Dean's brief in this Court. "Although the lawsuits do petitioner no particular credit, neither do they reveal anything more than *a trait for combativeness that many clients expect in lawyers*." Lubetzky v. State Bar, 54 Cal. 3d 308, 317; 815 P.2d 341 (1991) (emphasis added).

It is disingenuous for the Board's counsel to argue in support of the Board's after-the-fact review of Dean's litigation history, when in fact Assistant Attorney General Harold E. Pizzetta, III, has a dismal track record and he has repeatedly advanced arguments before this Court, other Mississippi courts, and federal courts which were found to be meritless. For example, in Mississippi v. Quitman County, 807 So. 2d 401 (Miss., 2001), **Board attorney Harold E. Pizzetta, III, advanced the utterly frivolous argument that Quitman County lacked standing because the complaint did not name any person who had been deprived of the effective assistance of counsel. This Court found that "clearly" Mr. Pizzetta's argument was lacking in merit, Id. at 405, and that his reliance on a particular constitutional provision "is misplaced" Id. at 408.** In response, Mr. Pizzetta might allege that he was simply following the orders of his client by advancing frivolous arguments, but an

attorney's duty of candor to the Court prohibits him from accepting a case that he knows has no merit or likelihood for success.

Similarly, in Mississippi v. The Board Of Levee Commissioners For The Yazoo-Mississippi, 932 So. 2d 12 (Miss., 2006), **this Court found that the argument and provision of law advanced by Assistant Attorney General Harold E. Pizzetta, III, "plainly conflicts with the clear language" of the Mississippi Constitution. Id. at 43. A review of that case reveals that it is highly likely that a first year law student would have been able to see that Mr. Pizzetta's argument was tenuous, at best;** yet, Mr. Pizzetta persisted anyway.

Even worse is the litigation history of Mr. Pizzetta's co-counsel, Assistant Attorney General Mary Jo Woods. She recently suffered an embarrassing loss when this Court acknowledged that her argument was completely contrary to published decisions of this Court:

> Significantly, the statute relied upon by the Chancery Court, the Insurance Commissioner, and the Attorney General, has been in place since 1972. Thus, were we to interpret the statute as the Commissioner and the Attorney General suggest, we would be required to abandon the position taken by this Court in both McDaniel and Clemmer, **since both cases were decided long after the effective date of the statute**.

Shelter Mutual Insurance Company v. Dale, 914 So. 2d 698, 702 (Miss., 2005) (emphasis added). **For another tenuous litigation argument advanced by Mary Jo Woods, see also Jackson Women's Health Organization Inc v. Amy, 330 F. Supp. 2d 820 (S.D. Miss. 2004) (Ms. Wood's had no legitimate authority in support of her arguments).**

In the instant case **the Board members have made litigation statements which are lies** in connection with their appeal brief and the Board's own attorneys have quite obviously handled cases where an attorney with integrity would have refused to participate. A law license is not a license to do injury to others. Yet, Chairman, Mozingo, the Board Members and their attorneys obviously believe to the contrary by their engaging in allegations in this case unsupported by the facts.

There is nothing in the Mississippi rules, statutes, case law, dicta or otherwise that would place an attorney licensing applicant on notice that his litigation history could be reviewed, picked apart, and retroactively declared to be evidence of bad moral character. Without proper notice, the result is a highly inappropriate consequence to the rights of applicants to petition the courts for redress of grievances. This Court should declare that **in the absence of any prior judicial finding of impropriety**, the Board should not revisit an applicant's litigation history.

III. Dean Was Denied Due Process of Law

While the Board's appeal brief correctly notes that Willner v. Committee on Character & Fitness, 373 U.S. 96; 83 S. Ct. 1175; 10 L. Ed. 2d 224 (1963) involved a case where the administrative board denied the petitioner any hearing at all, the Supreme Court went much further in explaining the procedural safeguards that must be afforded to applicants:

> A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment. (emphasis added)
>
> * * *
>
> Yet, the requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps.

Willner, 373 U.S. at 102, 105

The Supreme Court concluded that Due process requires that before denial of an application for admission to the bar for lack of the requisite character and fitness, the applicant must be afforded an opportunity to be confronted with, and to cross-examine, witnesses who supply information adverse to him. Willner, 373 U.S. at 103. In this case, the Board never produced the witnesses whose statements it intended to use at the hearing.

Notice that the Board carefully fails to address how a Mississippi licensing applicant can use the Board's subpoena power to gain access to people or records that are *out of state*. That is where the unfairness comes in. Willner, 373 U.S. at 102, 105. Surely, Dean was denied due process when the Board considered, for example, the Dean/Byerley case, when in fact Dean could not use the Board's subpoena power to force Mr. Nussbaumer to testify at the hearing.

In other words, according to the Board it is allowed to use documents and statements of people who are immune from a Mississippi subpoena; but when an applicant tries to defend himself against those *out of state* documents or witnesses, the applicant is out of luck. This is gross misuse of the character and fitness process. If the Board Members intend to use Mr. Nussbaumer's statements again Dean, the then Board should have forced Mr. Nussbaumer to appear at the hearing for a proper cross examination. The Board's conduct is chillingly akin to Hearings held in Nazi Germany where the individual was not allowed to produce witnesses to testify on his or her behalf nor allowed to cross-examine adverse witnesses .

IV. THE ALLEGATION THAT DEAN ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IS DISHONEST AND RIDICULOUS BECAUSE IT IS BASED ALLEGEDLY UPON EVENTS TOO REMOTE IN TIME (20 YEARS AGO)

The Board alleged that Dean engaged in the unauthorized practice of law **20 years ago**, in 1987 (Board Exhibit 23 and 24). The Board acknowledges in its brief that this information is antiquated, but it alleges that "misconduct recently repeated may be considered" (Board's brief, p. 17).

If that be true, then the Board was required to inform this Court precisely where "recently repeated" conduct had taken place. However, the Board's brief is dishonestly silent on this point. Surely, the Board does not claim that Dean recently engaged in the unauthorized practice of law. Therefore, whatever

happened 20 years ago cannot be the basis for present character rejection. The Board Members attempt to include this information is further evidence of their acknowledgment that they do not have a legitimate case against Dean.

V. IF VOICING LEGITIMATE CRITICISM AGAINST THE BOARD'S MEMBERS IS EVIDENCE OF "MENTAL OR EMOTIONAL INSTABILITY", THEN DEAN IS GUILTY. OTHERWISE, THE BOARD'S ALLEGATIONS ARE FRIVOLOUS.

Our nation's highest Court stated that denying an applicant for "severely" criticizing government officials is not rational. Konigsberg v. State Bar of California, 353 U.S. 252, 268-269; 77 S. Ct. 722; 1 L. Ed. 2d 810 (1957). **Therefore, as a matter of law, the members of the Mississippi Board of Bar Admissions are not rational attorneys.**

The First Amendment's guarantee of free speech embodies this nation's deeply rooted commitment to open expression. "'[T]he freedom to speak one's mind is not only an aspect of individual liberty — and thus a good unto itself — but also is essential to the common quest for truth and the vitality of society as a whole.'" Hustler Magazine v Falwell, 485 US 46, 50-52 (1988). Given the fundamental nature of this right, restrictions on it — whether against attorneys or any other group — can only be justified by a compelling state interest; even where justified, they must be narrowly tailored. Here, the Board members completely ignore this standard. They believe that if they do not approve of what an applicant

says, denial of admission is appropriate. Here, if Dean had made public statements praising the Board members for being upstanding members of society, he would not have been found to be "mentally or emotionally unstable". It was *the content* of Dean's speech that the Board Members disapproved of.

Expressions of opinion are also constitutionally protected. Milkovich v Lorain Journal Co, 497 US 1, 19 (1990). As explained in Standing Committee on Discipline v Yagman, 55 F3d 1430, 1438 (9th Cir 1995):

> ... statements impugning the integrity of a judge may not be punished unless they are capable of being proved true or false; statements of opinion are protected by the First Amendment unless they "imply a false assertion of fact."

55 F3d at 1438 (cite omitted). Similarly, "statements of 'rhetorical hyperbole' aren't sanctionable, nor are statements that use language in a 'loose, figurative sense'." Id. These standards are necessitated by the requirement of "'breathing space'" for First Amendment rights, Philadelphia Newspapers, Inc v Hepps, 475 US 767, 772 (1986), and by our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. New York Times v Sullivan, 376 US 254, 270 (1964).

Garrison v Louisiana, 379 US 64 (1964), and Yagman, supra, flow from these principles. In Garrison, for example, the Court reversed a prosecutor's criminal defamation conviction for having accused local judges of "inefficiency, laziness ... and hamper[ing] his efforts to enforce the vice laws", adding that the latter raised "interesting questions about the racketeer influences" on the bench. 379 US at 66; in Yagman, the attorney had referred to a judge as having "a penchant for sanctioning Jewish lawyers ... I find this to be evidence of anti-Semitism", as "dishonest", "ignorant", "ill-tempered", "buffoon" and a "right-wing fanatic".

History also teaches that restrictions on free expression do far more to undermine public confidence in a body than does critical expression itself. Cf. New York Times, supra, 376 US at 270, citing Whitney v California, 274 US 357, 375-376 (1927), Brandeis, J., concurring. As Justice Black stated for the Court in Bridges v California, 314 US 252, 270-271 (1941):

> The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion... an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

Applying the above principles to the Board's brief in this Court, there are two glaring problems: First, the Chancery Court (as well as the Board) failed to first decide as a threshold matter whether Applicant's statements were

constitutionally unprotected speech, an absolute prerequisite to going any further. New York Times, supra. If the statements that Applicant made were constitutionally protected, the inquiry ends. Second, the Board should not, and indeed constitutionally cannot, decide whether the public criticism that Applicant leveled against the Board and the Mississippi Supreme Court Justices constituted evidence of disqualifying misconduct.

Obviously it was the content of Dean's speech that resulted in the Board's finding that he lacked good moral character (and was "mentally or emotionally unstable"). As evidenced by the above authority, however, this Court cannot deny a person a license to practice law premised upon the content of his protected speech. What makes the Board's denial of Deans application particularly egregious is that the Board went further and found that Dean's free speech was evidence of his mental instability. The Board Members position, however, is chillingly synonymous with the philosophy employed to oust people from their rightful professions in the 1930's and 1940's in Nazi Germany.

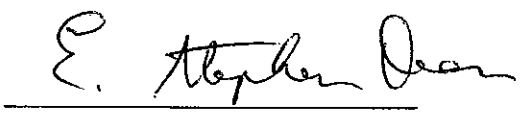
CONCLUSION

As a result of the Board's failure to offer this Court sufficient legitimate reasons to deny Applicant's request to engage in his life long ambition to practice law it is requested that this Court act in a Christian manner and grant his

application to sit for the Bar Examination so after becoming licensed he can represent Christians on Christian issues absolutely free.

Dated: August 20, 2007

Respectfully submitted:



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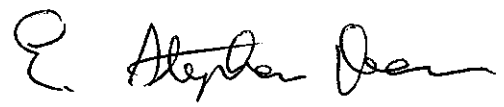
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished today via United Parcel Service to Linda M. Knight, Executive Director of the Mississippi Board of Bar Admissions, 656 North State Street, First Floor, Jackson, Mississippi 39202, and to the Board's counsels, Attorney General James Hood, Assistant Attorney General Harold E. Pizzetta, III, and Assistant Attorney General Mary Jo Woods, at 415 High Street, Jackson, Mississippi 39205.

Dated: August 20, 2007

Respectfully submitted:



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