

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
Case Number CIV-05-928 BB/ACT

STUART L. STEIN and  
STUART L. STEIN, P.A.,  
a professional law  
corporation d/b/a THE  
STEIN LAW FIRM,  
Plaintiffs,

vs.

LEGAL ADVERTISING COMMITTEE,  
et al.,  
Defendants.

COPY

DEPOSITION OF VIRGINIA FERRARA

May 24, 2006

2:06 p.m.

500 Marquette, Northwest, Suite 280  
Albuquerque, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL  
PROCEDURE, this deposition was:  
TAKEN BY: MR. STUART L. STEIN  
Attorney for Plaintiffs

REPORTED BY: Sally Peters, RPR, CCR 57  
Bean & Associates, Inc.  
Professional Court Reporting Service  
500 Marquette, Northwest, Suite 280  
Albuquerque, New Mexico 87102

(3553M)SP

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1 Q And it could have been that the lawyer who  
2 is under investigation said, "Now, wait a second.  
3 Time out. Let's wait until all of this settles out on  
4 the civil -- on the criminal side, and then I can deal  
5 with you guys"?

6 A Correct.

7 Q Do you ever recall a time when a request for  
8 a stay was made, either by counsel office, discipline  
9 counsel's office, or the lawyer where the request for  
10 stay was denied?

11 A Yes, several times.

12 Q Okay. And tell me what the basis was for  
13 the denial, if you can recall?

14 A That the issues were different, the issues  
15 in the two proceedings were totally different, or that  
16 in a criminal case, the crime alleged was so egregious  
17 that we needed to proceed somehow, and in those cases,  
18 often that would involve a motion for summary  
19 suspension.

20 Q So it could be where somebody was stealing  
21 money?

22 A Correct.

23 Q Or they were charged with a felony crime of  
24 violence or something like that?

25 A Correct.

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1 Q But other than a perceived need to see that  
2 this lawyer stopped practicing at once, do you recall  
3 any other times where the charges or the activity  
4 complained about were not so egregious where such stay  
5 was rejected?

6 A I don't recall specific instances, but I  
7 know that there have been some hotly debated requests  
8 for stay, and that sometimes board members would say,  
9 "No way we are going to keep going on this," sometimes  
10 when we will request a stay.

11 Q That would go against your request?

12 A Correct.

13 Q If a lawyer who is being investigated by  
14 your office responds back from your request for  
15 information saying, "Wait a second. There is a civil  
16 case here that these issues are going to be determined  
17 about. Let's wait and see," and if discipline counsel  
18 decides not to wait and see, are they ever notified  
19 they can go to the board or they can go to the  
20 chairman?

21 A We just automatically take that request to  
22 the board. See, we have gotten a request from this or  
23 that lawyer to hold this in abeyance. They are not  
24 notified. It just goes there.

25 Q Okay. And after it goes to the board and

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1 the board decides, no, you shouldn't abate it, do you  
2 then notify the lawyer and say, we took this to the  
3 board and they said no?

4 A Yeah. Yes.

5 Q So that's the way the office works?

6 A Yes.

7 Q All right.

8 A When I think of it, when we get a request  
9 from a lawyer, I just write to them and say, "We  
10 couldn't stop these proceedings, but I will present it  
11 to the board at their next meeting," and let them know  
12 what they say.

13 Q And that's what all discipline counsel  
14 should be doing?

15 A Yes.

16 Q Now, when a specification of charges is  
17 determined to be drafted and served, how is that  
18 decision reached?

19 A The investigating attorney prepares a  
20 specification of charges and gives it to me, and I go  
21 through it and either approve or disapprove it after  
22 talking with the attorney and saying, well, why do you  
23 think this and why do you think that? It used to be  
24 that the rule required a report, and the same kind of  
25 way that the report is now sent to a reviewing

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1 officer, but it was determined by the board at some  
2 point in time that that was kind of a wasted exercise,  
3 that just going over the charges, that we could pretty  
4 much determine whether or not there was probable  
5 cause.

6 Q Okay.

7 A So I will then look at the factual  
8 allegations, and from there I will look at the rules  
9 violations, and I will say, "I mean, assuming you  
10 prove all these facts, why does that involve a  
11 violation of this rule, or assuming you prove all  
12 these facts, how are you going to do it? By the way,  
13 why aren't you alleging the violation of this rule,"  
14 that kind of stuff.

15 Q Okay. And that's under that 17-307(E),  
16 correct?

17 A Yes.

18 Q All right. So this meeting that you have  
19 with the investigative assistant discipline counsel or  
20 deputy discipline counsel is an informal meeting?

21 A Correct.

22 Q And there are no notes taken about that?

23 A Correct.

24 Q It's not that I am trying to make the  
25 analogy, sometimes in practice when people have to do

1 things on a file, there will be somewhere with their  
 2 initials and they date it, that we did it on this  
 3 date?  
 4 A There is one of those included.  
 5 Q Okay.  
 6 A There will be a -- I don't know what it's  
 7 called, just one page thing that I sign, and it says,  
 8 on this date I reviewed the charges and approved them  
 9 for filing or disapproved them or approved them with  
 10 modification -- check, check, check.  
 11 Q Okay.  
 12 A And the date.  
 13 Q And that's on the inside of the file itself,  
 14 or is that kept in a separate place?  
 15 A It's in the file, working file.  
 16 Q All right. The working file that is held by  
 17 the discipline counsel in charge of prosecuting the  
 18 case?  
 19 A Yes.  
 20 Q And is this just a one-page item that you  
 21 sign that just concerns this review prior to filing?  
 22 A Yes.  
 23 Q All right. So once the specification of  
 24 charges comes to you and you review it and approve it,  
 25 what is the next step?

1 A To notify the chairman that this is being  
 2 filed and provide him with a copy. Once upon a time  
 3 the chairman kept all of the original copies. They  
 4 were physically filed with the chairman, but under  
 5 this system as it operates with a different  
 6 chairman --  
 7 Q Every year?  
 8 A -- every year, and confidentiality problems  
 9 and problems with having a chairman who may not have a  
 10 place to store these things, then the original  
 11 currently goes to the chairman of the hearing  
 12 committee. What happens is that Denise, who is our  
 13 administrative assistant, will call the chairman and  
 14 say, "We have charges filed against so and so. Who do  
 15 you want to put on the hearing committee?"  
 16 And the chairman will say, "Put so and so  
 17 and so and so and so and so," and then she will write  
 18 up a notice in designation of the hearing committee,  
 19 send the original to the chair, and the copies to each  
 20 of the other members.  
 21 Q Okay. And then the copy of that letter and  
 22 the copy of the specification of charges then is  
 23 served or mailed to the lawyer who is the respondent?  
 24 A Yes.  
 25 Q Okay.

1 MR. STEIN: You know, I think this was No. 2  
 2 and 3, weren't they, Jerry?  
 3 MR. WALZ: I think so.  
 4 Q (BY MR. STEIN) We called the two orders 2 and  
 5 3 before 1 and 2. They should be 2 and 3. No. 1 was  
 6 the request for production, and what was produced by  
 7 Mr. Walz on behalf of the defendants in this case is  
 8 what has been marked as No. 1, and there is about ten  
 9 pages or so of both lay people on one page and lawyers  
 10 on another for the three divisions within the state, the  
 11 Southern, Central, and Northern divisions, of people who  
 12 are hearing officers or potential members of the  
 13 committee?  
 14 A Yes.  
 15 Q Could you tell me if you know where these  
 16 particular copies came from?  
 17 A Mr. Walz, where did he get them?  
 18 Q Yes. Did it come from your office?  
 19 A It came from our office.  
 20 Q Okay.  
 21 MR. WALZ: I'm sorry. I thought you were  
 22 asking where did they get the information to put on  
 23 the lists.  
 24 MR. STEIN: No, no, no.  
 25 Q (BY MR. STEIN) I just wanted to know that if

1 we went to your office now and said, could you show us  
 2 who are the people who are potential members of the  
 3 hearing committees there, they would pull out these 10  
 4 or 15 pages.  
 5 A Correct. Probably we would pull out the  
 6 current list. We -- Denise will put out a list. Then  
 7 people drift off or die or horrible things like that  
 8 and get taken off the list, and this is like --  
 9 Q This is?  
 10 A -- then a new list is produced and the  
 11 missing members are no longer there.  
 12 Q So here we have -- somewhere there are  
 13 handwritten notations, and that on an irregular basis  
 14 Denise may just do up a brand new, clean list?  
 15 A Yes.  
 16 Q And say that is the list as of this date?  
 17 A Yes.  
 18 Q And these are the people involved?  
 19 A Yes.  
 20 Q All right. Now, you say Denise will ask the  
 21 chair who the chair wants on the committee?  
 22 A Yes.  
 23 Q And does the chair have a copy of this list?  
 24 A Yes.  
 25 Q And do you know if the chair goes through