

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AVANCE HARDEN, JR.

Plaintiff,

v.

No. 97-CV-74547-DT

McCLURG & ASSOCIATES, INC.,

a Michigan Corporation,

Defendant.

Hon. Denise Page Hood

District Judge

Hon. Thomas Carlson

Magistrate Judge

Richard W. McHugh (P36727)
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(313) 332-1015
Attorney for Plaintiff Avance Harden, Jr.

PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS

Avance Harden, Jr., by his counsel, submits the following Requests for Admissions to Defendant McClurg & Associates, Inc. pursuant to FR CivP Rule 36.

INSTRUCTIONS

If McClurg & Associates, Inc. (hereafter the "Defendant") fails to respond or object to any request within 30 days of the service of the Requests, the matter shall be deemed admitted under Rule 36.

As is more fully set out in Rule 36(a), the Defendant must admit or deny each request, and, where necessary, specify the parts of each request to which it objects or cannot in good faith admit or

deny. If the Defendant objects to only part of a Request, it must admit or deny the remainder of the Request. In the event that the Defendant objects to or denies any Request or portion of a Request, the Defendant must state the reasons for its objection or denial.

These Requests shall be deemed continuing and supplemental answers shall be required if you directly or indirectly obtain further information after your initial response as provided by FRCivP Rule 26(e).

Each Request solicits all information obtainable by Defendant McClurg & Associates, Inc. from Defendant's attorneys, investigators, agents, employees and representatives. If you answer a Request on the basis that you lack sufficient information to respond, describe any and all efforts you made to inform yourself of the facts and circumstances necessary to answer or respond.

DEFINITIONS

1. The word "or" is used herein in its inclusive sense unless the context clearly requires otherwise.

2. The term "document" means and includes without limitation all correspondence, memoranda, certificates, notes, books, manuals, pamphlets, brochures, advertisements, books of account, balance sheets, financial statements, profit and loss statements, working papers, schedules, diaries, calendars, logs, time records, equipment records, microfilms, transcripts, recordings, tapes, telexes, telegrams, files, proposals, bids, offers, contracts, agreements, change orders, worksheets, drawings, blue prints, designs, specifications, time cards, compilations, graphs, charts, bills, statements, invoices, receipts, bills of lading, shipping records, confirmations, applications, purchase orders, checks, checkbooks and other checking records, photographs, formulae, prescriptions, studies, projections, reports, computer programs, information contained in computer banks, tapes,

cards, printouts and drafts to the extent they differ from the originals, and all other records and papers of any nature whatsoever.

3. Any reference to a specifically named person, corporation or other entity and any reference generally to "person" shall include the employees, agents, representatives and other persons acting on behalf thereof or through whom the referenced person acts. The term "person" means and includes natural persons, corporations, partnerships, joint ventures, sole proprietorships, associations, trusts, estates, firms and any other entity.

4. As used herein, "Plaintiff" means, unless otherwise indicated, Avance Harden, Jr.

5. As used herein, "Defendant", shall be deemed to include McClurg & Associates, Inc., and Robert E. Cooper, as well as their agents, attorneys, representatives or any other person acting on their behalf or on behalf of any one of them.

FIRST SET OF ADMISSIONS

First Set of Admissions, Request 1. Admit that for all time periods relevant to the complaint filed in this matter, McClurg & Associates, Inc. was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the Fair Labor Standards Act, 29 U.S.C. §203(s)(1)(A).

First Set of Admissions, Request 2. Admit that Plaintiff was employed by Defendant from approximately 1978 until approximately 1987 and was treated as and characterized as an employee by Defendant during this time period.

First Set of Admissions, Request 3. Admit that the "agreement" signed in December 1993 by Plaintiff and Robert E. Cooper and attached as Exhibit A was prepared by Defendant and not by Plaintiff.

First Set of Admissions, Request 4. Admit that the "agreement" signed in December 1993 by Plaintiff and Robert E. Cooper and attached as Exhibit A was not presented to the Plaintiff at his request, but at the initiative of Defendant.

First Set of Admissions, Request 5. Admit that the "agreement" signed in December 1993 by Plaintiff and Robert E. Cooper and attached as Exhibit A resulted in Plaintiff being treated as an independent contractor by Defendant for the period beginning in December 1993 and ending in May 1997.

First Set of Admissions, Request 6. Admit that for the period beginning in December 1993 and ending in May 1997 there was no other person performing services for the Defendant as a draftsman, senior draftsman, or structural draftsman being treated as an independent contractor on a non-temporary basis other than the Plaintiff.

First Set of Admissions, Request 7. Admit that for the period beginning in December 1993 and ending in May 1997 there were other persons performing services for the Defendant as a draftsman, senior draftsman, or structural draftsman and being treated as employees by the Defendant.

First Set of Admissions, Request 8. Admit that persons treated as employees by the Defendant during the period of Plaintiff's employment beginning in December 1993 and ending in May 1997 received fringe benefits, including health insurance and pension.

First Set of Admissions, Request 9. Admit that Defendant used a work week beginning on Monday and ending on Sunday and paid its employees and Plaintiff on the basis of such a work week.

First Set of Admissions, Request 10. Admit that persons treated as employees by the Defendant during the period of Plaintiff's employment beginning in December 1993 and ending in May 1997 received overtime premium pay for any hours worked over forty (40) hours in a work week.

First Set of Admissions, Request 11. Admit that Defendant was aware of the overtime premium pay requirements of the Fair Labor Standards Act prior to December 1993.

First Set of Admissions, Request 12. Admit that Defendant paid Plaintiff weekly based upon Plaintiff's hours worked times the applicable hourly rate.

First Set of Admissions, Request 13. Admit that Defendant paid Plaintiff for more than forty (40) hours in a work week whenever Plaintiff worked more than forty (40) hours in a work week.

First Set of Admissions, Request 14. Admit that Plaintiff did not receive any overtime premium pay (at one-half his applicable hourly rate) for hours of work paid by Defendant to Plaintiff over forty (40) in a work week.

First Set of Admissions, Request 15. Admit that, with the exception of occasional assignments elsewhere by Defendant, Plaintiff performed all of his services for Defendant at Defendant's place of business located at 35 West Huron, Pontiac, Michigan.

First Set of Admissions, Request 16. Admit that during the period of December 1993 until May 1997 Plaintiff did not receive fringe benefits, including health insurance and pension.

First Set of Admissions, Request 17. Admit that after December 1993, Plaintiff's compensation was not calculated as a percent of Defendant's sales, profits, or income.

First Set of Admissions, Request 18. Admit that after December 1993, Plaintiff's compensation was not calculated as a percent of Defendant's sales, profits, or income from any particular project.

First Set of Admissions, Request 18. Admit that after December 1993, Plaintiff's compensation was not calculated in relation to the completion of any particular project.

Respectfully submitted,

Richard W. McHugh
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Attorney for Avance Harden, Jr.

February 27, 1998