



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	PUBLIC
NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS,	)	Docket No. 9343
Respondent.	)	
	)	

COMPLAINT COUNSEL'S ANSWER TO RESPONDENT'S APPLICATION  
FOR REVIEW OF A RULING DENYING RESPONDENT'S  
MOTION FOR DISCLOSURE

Respondent's Motion for Disclosure was denied by the Court's order of February 14, 2011 ("Feb. 14 Order"). The Board's application for interlocutory review of the denial of its Disclosure Motion, filed on February 18, 2011, is equally devoid of merit and should be denied.

I. Respondent Seeks Irrelevant Information.

By its Motion, Respondent seeks details regarding the internal divisions of labor between, and work assignments of, the various attorneys appearing in this matter as Counsel Supporting the Complaint ("Complaint Counsel" or "CC"), as well as the bar admissions for each of them. The internal organization and management of the attorneys appearing as Complaint Counsel in this matter is the epitome of hearing preparation materials within the meaning of Rule 3.31(c)(5), and Respondent's unsupportable, and unsupported, claim of

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<sup>1</sup> "Interlocutory appeals in general are disfavored, as intrusions on the orderly and expeditious conduct of the adjudicative process. Interlocutory appeals from discovery rulings merit a particularly skeptical reception because they are particularly suited for resolution by the Administrative Law Judge on the scene and particularly conducive to repetitive delay." Schering-Plough Corp 2002 WL 31433937, at \*8 (F.T.C. Feb. 12, 2002) (quoting the Commission's interlocutory order in Bristol Myers Co. 90 F.T.C. 273, 273 (Oct. 7, 1977)).

prejudice<sup>2</sup> is not substantiated by even a suggestion of a supporting fact or circumstance. The unsupported claim of prejudice certainly does not amount to the showing of “substantial need” required by the Rule to set aside the work product doctrine.

Perhaps more importantly, the Board has provided no showing of relevance, not even a token one, to any claim or defense in this matter that warrants the disclosure of the professional licenses held by each of the attorneys appearing as Complaint Counsel. Instead of a relevance showing, Respondent’s counsel purport to be enforcing a general “ethical” duty that CC owes to adverse counsel “to provide such information.” Respondent’s Appl. at 3. Even if there were such a duty, Respondent has failed to cite any authority that such duties are enforceable by motions to compel discovery under the Commission’s Rules of Practice.

Finally, if Respondent had a truly legitimate need for such licensing information, the Internet possesses a treasure trove of publicly available information about virtually everyone, including lawyers and their professional licensing information. A few well-designed keystrokes could have satisfied Respondent’s curiosity long ago regarding such matters.<sup>4</sup> The alternative ease with which counsel could have obtained Complaint Counsel’s professional licensing information suggests a less savory intent to interfere with CC’s trial preparation and

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<sup>2</sup> Respondent purports to be greatly confused “in understanding whom they should be interacting with” during this proceeding. Respondent’s Appl. at 4.

<sup>3</sup> Independent of discovery, Complaint Counsel has advised Respondent’s counsel that, if it has even a suspicion that any counsel for the Commission has or is engaging in any questionable ethical conduct, any such conduct (including specific facts relating thereto) should immediately be brought to the attention of co-lead counsel for the Commission, Messrs. Dagen and Lanning, and/or the Commission’s Inspector General for prompt investigation and remedial action.

<sup>4</sup> Complaint Counsel has previously informed Respondent’s counsel of the results that even a quick internet search would yield.

presentation: the dwindling inventory of dilatory motions could be supplanted in turn by questionable ethics complaints, sprinkled around the country, for example.

This application is nothing more than a specious distraction from the ongoing trial of the merits of this matter, and should be denied.

II.

1<sup>st</sup> Order at 5 (citations and quotations omitted). Finally discovery issues, such as those raised here are incapable of materially advancing the termination of this litigation.



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[PROPOSED] ORDER DENYING RESPONDENT'S APPLICATION  
FOR REVIEW OF A RULING DENYING RESPONDENT'S  
MOTION FOR DISCLOSURE

On February 18, 2011, Respondent, North Carolina State Board of Dental Examiners, filed its Application for Review of a Ruling Denying Respondent's Motion for Disclosure. On February 24, 2011, Complaint Counsel filed their Answer to Respondent's Application, disputing Respondent's entitlement to the requested order because the discovery issues raised by Respondent seek irrelevant information and otherwise do not qualify for interlocutory appeal within the meaning of Rule 3.23(b).

Respondent's Application does not qualify for interlocutory review under Rule 3.23(b), and it is DENIED.

ORDERED:

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D. Michael Chappell  
Chief, Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2011, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Counsel for Respondent  
North Carolina State Board of Dental Examiners

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

February 24, 2011

By: s/ Richard B. Dagen  
Richard B. Dagen