

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
THE NORTH CAROLINA [STATE] BOARD)
OF DENTAL EXAMINERS.)
)
)
_____)

PUBLIC
DOCKET NO. 9343

RESPONDENT'S MOTION TO CHANGE HEARING LOCATION

Respondent, the North Carolina State Board of Dental Examiners (hereinafter "State Board"), pursuant to Rule 3.22(a) and Rule 3.41(b)(1) of the FTC's Rules of Adjudicative Practice, hereby moves for an order to change the location of the hearing in the above-captioned matter to Raleigh, North Carolina.

Respondent's Counsel has conferred with Complaint Counsel in a good-faith effort to resolve by agreement the issues raised by this motion and has been unable to reach such agreement. Further, Complaint Counsel has indicated their intention to oppose this motion.

In support of its motion, the State Board provides the following:

1. The Scheduling Order entered on July 15, 2010 provides that the hearing in this matter will take place in Room 532 of the Federal Trade Commission in Washington, D.C. This location was selected by the Commission without discussion among the parties. At the time that this location was selected, the witnesses to be called at trial had not been identified; the location of relevant evidence and records was not considered; and possible undue hardships that the

Respondent may suffer as a result of the forum selection were not taken into account. Therefore, the Commission should now consider whether Washington, D.C. is the most appropriate forum for this hearing.

2. A Washington, D.C. forum is unnecessary for the Complaint Counsel to pursue this action against the State Board. The Commission may meet and exercise all of its powers at any place other than Washington, D.C. 15 U.S.C. § 43 (2010).
3. As consistently explained throughout the course of this proceeding, the State Board is an official North Carolina state agency. The State Board was created by an act of the North Carolina legislature and the State Board members are state officials sworn to uphold North Carolina statutes.
4. The instances giving rise to this action all occurred within the State of North Carolina. Specifically, the actions complained of by Complaint Counsel were taken by State Board members located in North Carolina against individuals and business located in North Carolina.
5. In Respondent's Final Proposed Witness List, submitted December 14, 2010, the State Board identified twenty (20) witnesses that it may call to testify at this hearing; all of these twenty (20) witnesses, except for two (2), are located in North Carolina¹. A number of these witnesses may be required to attend the hearing for more than one day.
6. In Complaint Counsel's Final Proposed Witness List, submitted December 7, 2010, Complaint Counsel identified twenty (20) witnesses² that it may call to

¹ Mr. Brian Runsick is located in Florida and Ms. Joyce Osborn is located in Alabama.

² Seven of Complaint Counsel's proposed witnesses also were identified by the State Board as proposed witnesses.

testify at this hearing; fourteen (14) of Complaint Counsel's twenty (20) witnesses are located in North Carolina. The remaining six (6) witnesses are located in places other than Washington, D.C., including Florida, Louisiana, Texas, Wisconsin, Georgia, and Alabama.

7. In Respondent's Expert Witness List, submitted on November 24, 2010, the State Board identified two (2) expert witnesses that it may call to testify at this hearing; one expert witness is located in North Carolina and one expert witness is located in Georgia.
8. In Complaint Counsel's Expert Witness List, submitted on November 5, 2010, Complaint Counsel identified two (2) expert witnesses who it may call to testify at this hearing; one expert witness is located in Florida and one expert witness is located in Massachusetts.
9. Twenty-seven (27) of the thirty-seven (37) witnesses in this hearing are located in North Carolina. Furthermore, none of the witnesses for either party are located in Washington, D.C. Therefore, a forum of Raleigh, NC rather than Washington, D.C. would more convenient for the witnesses in this proceeding. If this hearing is held in Washington, D.C. instead of Raleigh, all of the witnesses for both Complaint Counsel and the State Board will be forced to incur significant and unnecessary expenses for travel and housing, especially in light of the higher costs for travel, food, lodging, and transportation in Washington, D.C.
10. The Fourth Circuit has recognized that a denial of a request to change the location of the proceedings under circumstances similar to those presented here is an abuse of discretion. *See, e.g., Southern Ry. Co. v. Madden*, 235 F.2d 198, 201 (4th Cir.

1956) (finding failure to transfer to forum in which all of the witnesses were located was not a “sound exercise of discretion”); *see Akers v. Norfolk & W.R. Co.*, 378 F.2d 78, 79-80 (4th Cir. 1967) (per curium) (finding denial of request to transfer to the forum in which incident giving rise to the action occurred and all of the witnesses reside to be an abuse of discretion).

11. There is sufficient courtroom space within which the hearing of this matter may be conducted in Raleigh, NC.

For the foregoing reasons, the State Board respectfully requests that an order be issued to change the location of the hearing in the above-captioned matter to Raleigh, North Carolina.

This the 14th day of January, 2011.

ALLEN AND PINNIX, P.A.

/s/ Noel L. Allen

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2011, I electronically filed the foregoing Motion to Change Hearing Location with the Federal Trade Commission using the Federal Trade Commission E-file system, which will send notification of such filing to the following:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-159
Washington, D.C. 20580

I hereby certify that the undersigned has this date served copies of the foregoing upon all parties to this cause by electronic mail as follows:

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I also certify that I have sent courtesy copies of the document via Federal Express and electronic mail to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Room H-113
Washington, D.C. 20580
oyalj@ftc.gov

This the 14th day of January, 2011.

/s/ Noel L. Allen

Noel L. Allen

CERTIFICATION FOR ELECTRONIC FILING

I further 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 by the adjudicator.

/s/ Noel L. Allen

Noel L. Allen

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PROPOSED ORDER

Upon consideration of the motion of Respondent, the North Carolina State Board of Dental Examiners (hereinafter "State Board"), to change the location of the hearing in the above-captioned proceeding, and the Court being fully informed,

IT IS HEREBY ORDERED that the State Board's motion is GRANTED.

IT IS FURTHER ORDERED that the hearing in the above-captioned proceedings shall be held in Raleigh, North Carolina.

D. Michael Chappell
Administrative Law Judge

Date