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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of	**PUBLIC**
THE NORTH CAROLINA [STATE] BOARD OF DENTAL EXAMINERS,	DOCKET NO. 9343
Respondent.	

RESPONDENT'S APPLICATION FOR REVIEW TO THE COMMISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER DENYING RESPONDENT'S MOTION TO COMPEL DISCOVERY

Respondent, the North Carolina State Board of Dental Examiners (the "State Board"), hereby files this Application for Review to the Commission of the Administrative Law Judge's Order Denying Respondent's Motion to Compel Discovery ("Application for Review to the Commission") pursuant to FTC Rule 3.23(b) and in connection with the Order of the Administrative Law Judge ("ALJ") (copy attached hereto as Exhibit 1) denying Respondent's Motion for an Order Compelling Discovery (the "Motion").

On February 1, 2011, the ALJ denied Respondent's Application for Review regarding his Order. A copy of the Order ("Determination" per Rule 3.32(b)) Denying Respondent's Application for Review is attached hereto as Exhibit 2. Respondent files this Application for Review to the Commission in connection with its Motion and pursuant to Rule 3.32(b), incorporating herein by reference the arguments made in

support of its previous Application for Review. A copy of Respondent's Application for Review to the ALJ is attached hereto as Exhibit 3 (without exhibits as originally filed).

Respondent also makes the following additional arguments below.

I. The ALJ's Discretion.

As noted by Respondent in its Application for Review to the ALJ, Rule 3.22(g) and the Scheduling Order in this matter both allow the ALJ to exercise his discretion in deciding motions to compel. *See* Rule 3.22(g) ("[u]nless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue") (emphasis added). The ALJ denied Respondent's Motion and denied its Application for Review on the grounds that the Motion was not "accompanied" by a signed statement pursuant to Rule 3.22(g) and the Scheduling Order. Respondent's Motion described in detail how Complaint Counsel failed, and in many instances refused, to answer almost all of Respondent's Discovery Requests.

Given his discretion in the matter, instead of denying Respondent's Motion outright without even considering the substance of the Motion, the ALJ could have taken any of the three following actions:

1) Deemed the Motion to Compel incomplete and thus simply reject it. Since there was no explicit deadline in the Scheduling Order for filing the Motion, Respondent could have simply re-filed a complete document including the "statement" called for by the ALJ. Complaint Counsel would have had all the time permitted under the rules to respond, and then

the ALJ would have three days thereafter to rule on the substance of the motion;

2) The ALJ could have deemed the Motion unfiled until the statement was filed. Since there was no applicable deadline, deeming the Motion not completely filed until January 18, 2011, would have provided Complaint Counsel and the ALJ ample time to address the merits of the Motion; or,

3) The ALJ could have deemed the Motion as filed on January 11th to be complete to the extent it internally included a "signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement" inasmuch as (a) the Motion included a section entitled "GOOD FAITH ATTEMPT BY COUNSEL TO RESOLVE DISCOVERY MATTERS IN DISPUTE" and (b) set forth a statement that "Respondent's counsel and Complaint Counsel have negotiated in good faith to resolve the matters in dispute addressed by this Motion and have failed to resolve their dispute," and (c) was signed (electronically) by counsel for Respondent.

It must be noted that such leniency regarding procedural formalities has been afforded by this ALJ to Complaint Counsel in previous cases. *See, e.g., Hoecht Marion Roussel, Inc.*, 2000 FTC LEXIS 135, at *3-4 (Aug. 23, 2000) (ALJ exercised his discretionary authority to allow counsel supporting the complaint in that case to file a motion to compel despite it being filed *explicitly* outside of the time specified for filing

such a motion by the scheduling order because "fairness dictate[d]" as such). The Supplemental Statement tendered by this Respondent actually describes additional efforts on its part to resolve the impasse notwithstanding the impasse it had declared. Some of those matters occurred on January 12th and 13th, after it had filed its Motion. Respondent here is essentially being punished for reopening the good faith discussions. To date, the ALJ has not ruled upon the substance of the Motion, preferring to erect a technical ground for denial that avoids a meaningful review of the actual discovery responses.

II. Compliance with Scheduling Order.

The Scheduling Order states that "[a]ny motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute." Under the Commission's Rules, when calculating deadline periods of 7 days or less, weekends and holidays are not included. FTC Rule 4.3(a). Respondent declared its impasse on January 11, 2011, and filed its Motion the same day with its original signed statement regarding good faith negotiations included. The signed Supplemental Statement detailing both the good faith negotiations between counsel and *further* good faith communications subsequent to the filing of the Motion was filed electronically on January 14, and, pursuant to Commission Rules, "deemed filed" on January 18, 2011 because the previous three days (January 15, 16, and 17) were not business days.[1] Accordingly, under relevant Commission Rules regarding

[1] The Order stated that "On January 18, 2011, Respondent filed a Supplemental Statement to [its] Motion for an Order Compelling Discovery" and characterized the submission of the Supplemental Statement as "several days" after the Motion. In his denial of Respondent's Application for Review, the ALJ explains that these statements were made in consideration of the fact that the Commission Rules provide that, although the Statement was filed electronically at 5:33 pm on Friday January 14, it was "deemed filed" on the following Tuesday, January 18, 2011. Respondent notes, however, that it based its assertions about the filing date of its Supplemental Statement upon representations made on the Commission's e-filing website. A review of the "Status of Your Filings" page on the e-filing website clearly indicates a filing date for the

timing, the deadline set by the Scheduling Order for filing the Motion to Compel was January 19, 2011, and both the Motion and the Supplemental Statement accompanying it were filed within this time frame.

Despite the above facts, the ALJ refused to consider the substance of the Motion because the Supplemental Statement was not filed at the same moment as the Motion, and further has determined that the form of the original Declaration (Lanning) made by Complaint Counsel is permissible but not the Declaration (Carlton) made by Respondent and included with its Application for Review.

III. Respondent's Due Process Rights.

In his Determination denying Respondent's Application for Review, the ALJ notes Respondent's arguments that its due process rights were denied, but that such rights were "immaterial" to the ALJ's determination and accordingly would "not [be] considered or evaluated." The ALJ's refusal to even consider Respondent's due process rights in connection with the Motion or to allow consideration of Respondent's arguments regarding those rights on appeal amounts to a denial of Respondent's due process rights.

Respondent further notes that the requirement of Rule 3.23 that Respondent must file an application for review with the Commission within one day of the ALJ's determination in order to secure an appeal is itself a further denial of Respondent's due process rights, as it does not afford adequate time for Respondent to make further arguments in support of its grounds for an appeal.

Supplemental Statement of January 11, 2011 under the "E-Filing Date" column. *See* Exhibit 4 attached hereto.

WHEREFORE, Respondent requests that the Commission GRANT its Application for Review and certify the denial of Respondent's Motion for an Order Compelling Discovery for an interlocutory appeal.

This the 2nd day of February, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2011, I electronically filed the foregoing 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-172
Washington, D.C. 20580
dclark@ftc.gov

I hereby certify that the undersigned has this date served a copy of the foregoing upon the Secretary and 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
oalj@ftc.gov

This the 2nd day of February, 2011.

/s/ Alfred P. Carlton, Jr.
Alfred P. Carlton, Jr.

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/ Alfred P. Carlton, Jr.
Alfred P. Carlton, Jr.

EXHIBIT
1
ALL-STATE LEGAL®

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

In the Matter of	)	
	)	
The North Carolina Board of Dental Examiners, Respondent.	)	DOCKET NO. 9343

ORDER DENYING RESPONDENT'S MOTION TO COMPEL

I.

On January 11, 2011, Respondent filed a Motion for an Order Compelling Discovery and a Memorandum in Support thereof ("Motion to Compel") pursuant to Commission Rule 3.38(a). Specifically, Respondent requests an order compelling Complaint Counsel to submit further responses to:

1. Respondent's Requests for Admissions numbered 1, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23 and 24;

2. Respondent's Interrogatories numbered 1, 2, 3, 4, 5, 6, 9, 11, 12, 13 and 14;

3. Requests for Production numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

Complaint Counsel's responses to the above-referenced discovery requests contained numerous and various objections, including that the requests were irrelevant, burdensome, vague, or improperly sought privileged information or other information beyond the scope of permitted discovery. Complaint Counsel also responded to the discovery requests subject to its objections, as applicable.

Respondent's Motion to Compel argues that Complaint Counsel's objections and responses to Respondent's discovery requests are insufficient and that further responses are required. On January 18, 2011, Respondent filed a Supplemental Statement to Motion for an Order Compelling Discovery ("Supplemental Statement"). Also on January 18, 2011, Complaint Counsel filed its opposition to the Motion to Compel ("Opposition"), asserting various procedural and substantive grounds for denying the Motion to Compel.

For the reasons set forth below, Respondent's Motion is DENIED.

II.

Respondent filed its Motion to Compel pursuant to Commission Rule 3.38(a), which allows a party to apply by motion to the Administrative Law Judge for an order compelling disclosure or discovery. 16 C.F.R. § 3.38(a). Respondent's Motion to Compel is also subject to the Commission rule governing motions, Rule 3.22.

Rule 3.22(g) states in pertinent part:

> [E]ach motion to compel or determine sufficiency pursuant to § 3.38(a) . . . shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. . . . The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference. Unless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

16 C.F.R. § 3.22(g).

Respondent's Motion to Compel fails to comply with the express terms of Commission Rule 3.22(g). Respondent's Motion to Compel was not accompanied by the required signed statement. Instead, several days after submitting the Motion to Compel, Respondent submitted a "Supplemental Statement" attaching a chart summarizing the date, time, and place of communications with Complaint Counsel and the names of the parties involved in each such communication.

Rule 3.22(g) is not vague and does not contemplate nor allow a supplement or amendment to an already-filed motion. In addition, Additional Provision 4 of the Scheduling Order entered in this case requires that:

> Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. Motions that fail to include such statement may be denied on that ground.

Thus, the parties were on notice that failure to include the required statement with a motion to compel could result in denial of such motion on that basis alone. Respondent failed to comply with the unequivocal requirements of Rule 3.22(g). Accordingly,

Respondent's motion is denied and a determination of other issues presented need not and will not be made.

III.

For the foregoing reasons, Respondent's Motion to Compel is DENIED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

January 20, 2011

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

In the Matter of	)	
The North Carolina Board of Dental Examiners, Respondent.	)	DOCKET NO. 9343

ORDER DENYING RESPONDENT'S APPLICATION FOR REVIEW OF ORDER DENYING RESPONDENT'S MOTION TO COMPEL DISCOVERY

I.

On January 24, 2011, Respondent filed an Application for Review of a Ruling Denying Respondent's Motion to Compel Discovery ("Application"). Complaint Counsel filed its Opposition to the Application on January 27, 2011 ("Opposition").

Having fully considered all arguments in the Application and Opposition, and as further discussed below, because Respondent has failed to meet any of the requirements of Commission Rule 3.23(b), the Application is DENIED.

II.

A. Standards for allowing application for review under Rule 3.23(b)

Respondent moves for interlocutory review pursuant to Commission Rule 3.23(b). That rule states:

> A party may request the Administrative Law Judge ["ALJ"] to determine that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.

16 C.F.R. § 3.23(b). Interlocutory appeals are disfavored, as intrusions on the orderly and expeditious conduct of the adjudicative process. *In re Daniel Chapter One,* 2009 FTC LEXIS 111, *1 (May 5, 2009); *In Re Schering-Plough Corp.*, 2002 WL 31433937 (Feb. 12, 2002). Accordingly, the movant must satisfy a very stringent three-prong test by demonstrating that: (1) the ruling involves a controlling question of law or policy; (2) there is substantial ground for difference of opinion as to that controlling issue; *and* (3) immediate appeal from the ruling may materially advance the ultimate termination of the

litigation *or* subsequent review will be an inadequate remedy. 16 C.F.R. § 3.23(b); *In re Daniel Chapter One,* 2009 FTC LEXIS 111, *1-2; *In Re Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 478, at *1 (Nov. 5, 1996); *In Re BASF Wyandotte Corp.*, 1979 FTC LEXIS 77, at *1 (Nov. 20, 1979).

B. The ruling for which interlocutory review is sought

By Order dated January 20, 2011, Respondent's Motion for an Order Compelling Discovery ("Motion to Compel") was denied ("January 20, 2011 Order"). Respondent's Motion to Compel, which argued that certain of Complaint Counsel's objections and responses to Respondent's discovery requests were insufficient, was filed on January 11, 2011. Respondent filed what it titled a "Supplemental Statement to Motion for an Order Compelling Discovery" ("Supplemental Statement") on January 18, 2011.

The January 20, 2011 Order denied Respondent's Motion to Compel due to Respondent's failure to comply with the express terms of Commission Rule 3.22(g). As stated in the January 20, 2011 Order, Commission Rule 3.22(g) requires:

> [E]ach motion to compel or determine sufficiency pursuant to § 3.38(a) . . . shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. . . . The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference. Unless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

16 C.F.R. § 3.22(g).

The January 20, 2011 Order held:

> Respondent's Motion to Compel was not accompanied by the required signed statement. Instead, several days after submitting the Motion to Compel, Respondent submitted a "Supplemental Statement" attaching a chart summarizing the date, time, and place of communications with Complaint Counsel and the names of the parties involved in each such communication. Rule 3.22(g) is not vague and does not contemplate nor allow a supplement or amendment to an already-filed motion.

January 20, 2011 Order at 2. In addition, the January 20, 2011 Order noted that Additional Provision 4 of the Scheduling Order in this case requires that:

> Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a signed statement representing that

> counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. Motions that fail to include such statement may be denied on that ground.

January 20, 2011 Order at 2.

Thus, the January 20, 2011 Order concluded:

> the parties were on notice that failure to include the required statement with a motion to compel could result in denial of such motion on that basis alone. Respondent failed to comply with the unequivocal requirements of Rule 3.22(g). Accordingly, Respondent's motion is denied and a determination of other issues presented need not and will not be made.

January 20, 2011 Order at 2-3.

III.

A. The January 20, 2011 Order does not involve a controlling question of law or policy as to which there is substantial ground for difference of opinion

Respondent argues that the ruling in the January 20, 2011 Order "that Rule 3.22(g) 'is not vague and does not contemplate nor allow a supplement or amendment to an already-filed motion . . .', reads a simultaneity requirement into the language of Rule 3.22(g), which states that 'each motion to compel or determine sufficiency pursuant to 3.38(a) . . . shall be **accompanied** by a signed statement representing that counsel for the moving party has conferred with opposing counsel . . . ." Application at 2 (quoting January 20, 2011 Order at 2, emphasis in Application). Respondent then argues that the January 20, 2011 Order assumes that "accompany" means "immediately with" or "accompany at the same time." Application at 2-3. Respondent urges that "accompany" has been defined as "to be in association with," which does not suggest simultaneity.

Respondent's assertions in this regard completely ignore the clear and unambiguous language of Rule 3.22(g), that the required signed statement "must be filed only **with** the first motion concerning compliance with the discovery demand at issue." 16 C.F.R. § 3.22(g) (emphasis added). It is undisputed that the Supplemental Statement was not filed "with" the Motion to Compel. Thus, the simultaneity requirement is expressly provided by Rule and the Order required no "interpretation" of the Rule to reach the challenged result.

For further clarification, common definitions of "accompany" are:

> "To go along with (another); to attend." *Black Law's Dictionary* 18 (9th ed. 2009).

> "To go or occur with: attend." *Merriam-Webster's Dictionary & Thesaurus* 8 (2006).
>
> "[To] go somewhere with someone; 2: be present or occur at the same time as." *Pocket Oxford American Dictionary* 5 (2nd ed. 2008).

Under the plain language of the Rule and commonly accepted definitions, the January 20, 2011 Order does not involve a question of law or policy as to which there is substantial ground for difference of opinion. To be sure, Rule 3.22(g) requires the signed statement to be prepared and filed with a motion to compel to ensure that the parties have in fact conferred and negotiated in good faith in an attempt to resolve their discovery dispute before any motion to compel is filed. Good faith negotiations often obviate the need to file such a motion. Applying any other definition of "accompany," however contrived, vitiates the good faith negotiation requirement of the Rule.

Further, to establish substantial ground for difference of opinion, a party seeking certification must show that a controlling legal question involves novel or unsettled authority. *In re Daniel Chapter One*, 2009 FTC LEXIS 111, *2; *Int'l Assoc. of Conf. Interpreters*, 1995 FTC LEXIS 452, at *5. *See also Fed'l Election Comm'n v. Club for Growth, Inc.*, No.: 5-851 (RMU), 2006 U.S. Dist. LEXIS 73933 (D.D.C. Oct. 10, 2006) (stating that "one method for demonstrating a substantial ground for difference of opinion is 'by adducing conflicting and contradictory opinions of courts which have ruled on the issue'"). Based upon a reading of the Rule and the plain language of the above listed, commonly accepted sources, it is clear that the definition of "accompany" does not involve novel or unsettled authority. Instead, it is clear that "accompany" means together or at the same time. Thus, whether or not the required 3.22(g) statement must be filed at or near the same time as the Rule 3.38 motion does not present a question of law or policy as to which there is substantial ground for difference of opinion.

In addition, to establish a "substantial ground" for difference of opinion under Rule 3.23(b), "a party seeking certification must make a showing of a likelihood of success on the merits." *In re Daniel Chapter One*, 2009 FTC LEXIS 111, *6 (citing *Int'l Assoc. of Conf. Interp.*, 1995 FTC LEXIS 452, *4-5 (Feb. 15, 1995); *BASF Wyandotte Corp.*, 1979 FTC LEXIS 77, *3 (Nov. 20, 1979) (stating that the substantial ground for difference of opinion test "has been held to mean that appellant must show a probability of success on appeal of the issue.")). In the face of the unambiguous language of Rule 3.22(g) and the plain meaning of "accompany," Respondent has also not shown a likelihood of success on the merits.

Moreover, the January 20, 2011 Order does not present a "controlling" question of law or policy. A "controlling" question of law or policy has been defined as "'not equivalent to merely a question of law which is determinative of the case at hand. To the contrary, such a question is deemed controlling only if it may contribute to the determination, at an early stage, of a wide spectrum of cases.'"); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 155, *19 (Oct. 17, 2000) (quoting *In re Automotive*

Breakthrough Sciences, Inc., 1996 FTC LEXIS 478, *1 (Nov. 5, 1996)). Procedural disputes and discovery disputes do not amount to controlling questions of law. *In re Suburban Propane Gas Corp.*, 74 F.T.C. 1602, *9; 1968 FTC LEXIS 277 (Sept. 20, 1968) (denying request for interlocutory review concerning prehearing discovery on grounds that appeals concerning "issues relating to procedural details . . . concern prehearing discovery or procedure and thus are subject to the wide discretion of the hearing examiner"[1]); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 155, *19 (Oct. 17, 2000) ("discovery ruling does not involve a controlling question of law or policy"). The January 20, 2011 Order was a procedural ruling, relating to a discovery motion, and therefore does not present a controlling question of law or policy.

Respondent states that the ALJ had discretionary authority to permit the motion and "draws the ALJ's attention to the discretionary language of Rule 3.22(g) and the Scheduling Order." Application at 5. Rule 3.22(g) provides: "[u]nless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue." Respondent argues that the ALJ may exercise his discretion in this matter, and is not obliged to rule against Respondent based on the timeliness requirement. Denying the Motion to Compel was an exercise of the ALJ's discretion.

This exercise of discretion does not provide grounds for interlocutory appeal. Indeed, the Commission, in reviewing issues which "concern[ed] the hearing examiner's prehearing rulings relating to discovery and discovery procedures," held: "[t]he Commission's policy . . . , frequently stated in Commission opinions, is that the hearing examiner has a broad discretion therein and the Commission will not interfere with his rulings short of a showing of an abuse of such discretion." *In re Suburban Propane Gas Corp.*, 74 F.T.C. 1602; 1968 FTC LEXIS 277, *3 (Sept. 20, 1968). "The resolution of discovery issues, as a general matter, should be left to the discretion of the ALJ." *In re Gillette Co.*, 98 F.T.C. 875, 875; 1981 FTC LEXIS 2, *1 (Dec. 1, 1981); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 155, *19 (Oct. 17, 2000).

For the above stated reasons, Respondent has not demonstrated that the January 20, 2011 Order involves a controlling question of law or policy as to which there is substantial ground for difference of opinion.

B. An immediate appeal from the January 20, 2011 Order would not materially advance the ultimate termination of the litigation and subsequent review would not be an inadequate remedy

Respondent also has not demonstrated that immediate appeal from the ruling may materially advance the ultimate termination of the litigation or that subsequent review will be an inadequate remedy. Although the ruling for which Respondent seeks appeal is that Respondent failed to comply with Rule 3.22(g), the underlying motion was

[1] The title of the presiding officer was changed from "Hearing Examiner," to "Administrative Law Judge," in 1970. *In re Adolph Coors Co.*, 83 F.T.C. 32; 1973 FTC LEXIS 226 (July 24, 1973) (citations omitted).

Respondent's Motion to Compel Further Discovery Responses. Even if Respondent had complied with Rule 3.22(g) and Respondent's Motion to Compel had been considered and denied on the merits, a review of such a denial would not materially advance the ultimate termination of the litigation. *See In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 155, *20 ("It is clear that an appeal of the discovery ruling at issue would not materially advance the ultimate termination of the litigation. Such a construction would make every ruling in every case appealable as to the relevance and propriety of any areas of discovery allowed by an administrative law judge. 'This would negate the general policy that rulings on discovery, absent an abuse of discretion, are not appealable to the Commission.'"); *In re Exxon Corp.*, 1978 FTC LEXIS 89, * 12 (Nov. 24, 1978). Indeed, for that reason, the Commission "generally disfavor[s] interlocutory appeals, particularly those seeking Commission review of an ALJ's discovery rulings." *In re Gillette Co.*, 98 F.T.C. 875, 875; 1981 FTC LEXIS 2, * 1 (Dec. 1, 1981); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 155, *18-19.

Although the January 20, 2011 Order did not decide whether Complaint Counsel's claims of privilege were "dubious," as challenged by Respondent, even if the January 20, 2011 Order had denied Respondent access to documents on the basis that the documents had been properly withheld, such a ruling, even if erroneous, would also fail to provide a basis for interlocutory appeal. In *In re Exxon Corp.*, 1981 FTC LEXIS 112, *4-5 (Feb. 13, 1981), the ALJ held that Respondents failed to show that an immediate ruling allowing discovery of documents withheld on privilege grounds "would materially advance termination of the case or render inadequate subsequent review" because the documents had been listed on a privilege log and preserved, and therefore would be available if, on subsequent review of a final order, a court decided to order the Commission to take additional evidence. *See also Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 609 (2009) ("In sum, we conclude that the collateral order doctrine does not extend to disclosure orders adverse to the attorney-client privilege. Effective appellate review can be had by other means.").

For the above stated reasons, Respondent has not demonstrated that an immediate appeal from the January 20, 2011 Order would materially advance the ultimate termination of the litigation or that subsequent review would be an inadequate remedy.

C. Other issues raised by Respondent are not relevant to an application for review

Respondent raises several other arguments which are not relevant to a ruling on an application for interlocutory review under Rule 3.23(b). Those arguments follow in the order in which they were raised.

Respondent states that its Motion to Compel was accompanied by a statement set forth on page two that "counsel for the moving party conferred with opposing counsel in a good faith effort to resolve the issues" and that the pleading containing this statement was signed. The ALJ considered the statement and determined, for the reasons set forth in the January 20, 2011 Order and repeated herein, that that statement was insufficient to

fulfil all the requirements of Rule 3.22(g). The fact that Respondent subsequently filed its "Supplemental Statement," attaching a chart that summarized the date, time, and place of communications with Complaint Counsel and the names of the parties involved in each such communication, indicates that Respondent was aware that the Rule requires more than the statement Respondent included in its Motion to Compel.

Respondent argues that it was denied its due process right to confront a witness because it was denied the opportunity to respond to claimed misrepresentations and omissions made by Complaint Counsel in Complaint Counsel's description of the parties' negotiations, through either a reply or a hearing. This argument is immaterial because the January 20, 2011 Order did not address or attempt to resolve issues concerning the parties' pre-motion negotiations. More importantly, however, whether or not Respondent was denied the claimed right to rebut Complaint Counsel's representations is immaterial to the determination herein that the Application for Review of the January 20, 2011 Order does not meet the standards for interlocutory review. Accordingly, such arguments are not considered or evaluated.

Respondent contends that the January 20, 2011 Order "mistakenly" asserted that the Supplemental Statement was filed on January 18, 2011, and that it was "timely filed" on January 14, 2011. In support of its argument, Respondent attaches, as Exhibit 2 to its Application, a "Confirmation of E-Filing Submission" ("Confirmation"). The date on which the Confirmation was printed, located on the bottom of the Confirmation, is January 14, 2011. But, the Confirmation itself does not show the time or date on which the Supplemental Statement was received for filing by the Office of the Secretary. In fact, as shown by the attached "Review Filing" (Exhibit 1 to this Order), Respondent's Supplemental Statement was received at 5:33 p.m. on January 14, 2011. Commission Rule 4.3(d) states: "[d]ocuments must be received in the office of the Secretary of the Commission by 5:00 p.m. Eastern time to be deemed filed that day. Any documents received by the agency after 5:00 p.m. will be deemed filed the following business day." 16 C.F.R. § 4.3(d). Consistent with the Rule, Exhibit 1 shows a "Filed Date" for the Supplemental Statement of January 18, 2011. Accordingly, the January 20, 2011 Order did not "mistakenly state that Respondent's Supplemental Statement was filed on January 18, 2011," as Respondent avers. Even if Respondent's Supplemental Statement was deemed filed on January 14, 2011, the Supplemental Statement was not filed with the January 11, 2011 Motion to Compel, as specifically required by Rule 3.22(g).

Respondent also argues that the January 20, 2011 Order was arbitrary and capricious and a violation of fundamental notions of fairness, especially given the ALJ's discretion. Again, whether a decision is arbitrary and capricious is not the correct inquiry in evaluating an application for interlocutory review. As stated above, the ALJ has discretion in discovery matters and the Commission will not interfere with ALJ rulings on discovery short of a showing of an abuse of such discretion. *In re Suburban Propane Gas Corp.*, 74 F.T.C. 1602; 1968 FTC LEXIS 277, *3 (Sept. 20, 1968); *In re Gillette Co.*, 98 F.T.C. 875, 875; 1981 FTC LEXIS 2, *1 (Dec. 1, 1981). In view of the plain language of Rule 3.22(g) and the meaning of the word "accompany," as described above, a ruling that a statement filed several days after the original motion did not comply with Rule

3.22(g) is not an abuse of discretion.

IV.

Respondent has failed to meet any of the requirements of Rule 3.23(b). After full consideration of Respondent's Application and Complaint Counsel's Opposition, and having fully considered all arguments and contentions therein, Respondent's Application is DENIED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: February 1, 2011

EXHIBIT 1

Review Filing

Filing Details

Docket Number	D09343
Matter Name	The North Carolina Board of Dental Examiners
Submission Number	D09343-a525d553-87fe-4747-ae8c-e1d913ef4596
Received Date	01/14/2011 05:33 PM
Filed Date	01/18/2011
Filer Document Title	Supplemental Statement to Respondent's Motion for an Order Compelling Disc
Relevant Party	Bobby White;N.C. State Board of Dental Examiners;N.C. State Board of Dental Examiners;N.C. State Board of Dental Examiners;N.C. State Board of Dental Examiners
Document Type	
Filer Name	Noel Allen
Remarks	
Status	
Document (Original)	**2011-0114 Supplemental Statement to Respondents Motion for an Order Compelling Discovery_orig.pdf**
Document (Copy)	**2011-0114 Supplemental Statement to Respondents Motion for an Order Compelling Discovery_copy.pdf**

Cancel

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

In the Matter of	)	**PUBLIC**
THE NORTH CAROLINA [STATE] BOARD OF DENTAL EXAMINERS,	)	DOCKET NO. 9343
Respondent.	)	

RESPONDENT'S APPLICATION FOR REVIEW OF A RULING DENYING RESPONDENT'S MOTION TO COMPEL DISCOVERY

Respondent, the North Carolina State Board of Dental Examiners (the "State Board"), hereby files this Application for Review pursuant to FTC Rule 3.23(b) and in connection with the Ruling of the Administrative Law Judge ("ALJ") ("Ruling," attached hereto as Exhibit 1) denying Respondent's Motion for an Order Compelling Discovery ("Motion") of its Discovery Requests. Respondent files this Application because the Ruling involves 1) a controlling question of law; 2) as to which there is substantial ground for difference of opinion; and 3) a subsequent review of the Ruling will be an inadequate remedy.

Further, the ALJ's Ruling was prematurely entered being based solely upon Respondent's Motion and Complaint Counsel's Opposition thereto, the latter of which contained numerous errors of law and misrepresentations of fact,[1] and to which

[1] Comment [3] of Rule 3.3 of the Model Rules of Professional Conduct ("Candor Toward The Tribunal"), which addresses "Representations by a Lawyer," states that "an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."

Respondent was denied of the ability to reply.[2] In short, as a matter of due process and the law of *Goldberg v. Kelly*, 397 U.S. 254 (1970), the ALJ did not have all of the law and all of the facts, and Respondent was denied its ability to be fairly heard regarding the law of the case and the record. *See id.* at 269 ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.").

Finally, the ALJ mistakenly states that Respondent's Supplemental Statement was filed on January 18, 2011, when in fact it was filed on January 14, 2011. *See* Exhibit 2, Confirmation of E-Filing Submission for Supplemental Statement. Based on the foregoing, Respondent should be afforded the opportunity to be heard on appeal.

I. Controlling Questions of Law as to Which There Is Substantial Ground for Difference of Opinion.

A. Rule 3.22(g) Questions.

1. "Accompany" Does Not Require "Simultaneity."

The ALJ's Ruling states that Rule 3.22(g) "is not vague and does not contemplate nor allow a supplement or amendment to an already-filed motion." However this statement reads a simultaneity requirement into the language of Rule 3.22(g), which states that "each motion to compel or determine sufficiency pursuant to §3.38(a) . . . shall be **accompanied** by a signed statement representing that counsel for the moving party has conferred with opposing counsel . . . ." Ruling at 2 (emphasis added). Thus the Ruling assumes that "accompany" means *immediately* with, or that "accompany" means "accompany at the same time."

[2] Rule 3.38 is silent as to the potential for a reply to an opposition to a motion to compel. But present circumstances and due process require that Respondent be permitted to respond here due to the nature of the statements made in Complaint Counsel's Opposition.

"Accompany" is not defined anywhere in the FTC Rules nor does it appear in any editions of *Black's Law Dictionary* consulted by Respondent's Counsel. However, the word "accompany" is not commonly defined in terms of simultaneity or immediacy. *Merriam-Webster's Dictionary* defines "accompanied" to mean "to be in association with." *See also* www.thefreedictionary.com ("To add to; supplement"); www.dictionary.com ("to put in company with; cause to be or go along; associate (usually fol. by with)") (all websites last visited Jan. 22, 2011). This does not suggest the simultaneity that is implied by the Ruling – indeed, it suggests merely that the Supplemental Statement be "associated" with the Motion, which in this instance it was by nature of its designation as a "supplemental statement."

2. The Motion to Compel *Was* Accompanied by a Statement, and the Pleading was Signed.

The Ruling notes that Additional Provision 4 of the Scheduling Order requires a signed statement representing that counsel for the moving party conferred with opposing counsel in a good-faith effort to resolve the issues. Respondent complied with this Provision. The statement appears on page two of the Respondent's Motion for an Order Compelling Discovery, and there was an electronic signature affixed to the motion. *See* Motion, attached hereto as Exhibit 3.

B. Respondent Was Denied Due Process and Its Sixth Amendment Right to Confront a Witness.

The Supreme Court held in *Goldberg v. Kelly*, 397 U.S. 254 (1970) that "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Id.* at 269.

This protection extends to civil cases involving administrative actions such as the one here:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment . . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.

Id. at 270 (quoting *Greene v. McElroy*, 360 U.S. 474, 496-97 (1959)).

Here, numerous misrepresentations and omissions of material facts were made in sworn statements by Complaint Counsel in both its Opposition and the attached Declaration of William Lanning. *See* Declaration of Alfred P. Carlton, Jr. (detailing misrepresentations and omissions) filed herewith. On January 20, 2011, Respondent electronically filed a request for a hearing in order to afford it the forum to respond to these misrepresentations. The ALJ issued his Ruling that day denying Respondent's original Motion.[3] Thus Respondent was deprived of the ability to respond to Complaint Counsel's misrepresentations, which formed a large part of the record upon which the ALJ's ruling was based. This essentially amounted to an *ex parte* ruling by the ALJ where Respondent had no opportunity to correct the record.

[3] Counsel for Respondent is not certain of whether the ALJ's Ruling was filed before or after Respondent's request for a hearing. In any event, Respondent was not provided a forum to respond to Complaint Counsel's misrepresentations.

Guidance from the Supreme Court here is controlling in showing a substantial ground for difference of opinion on the outcome of the Ruling. Respondent has been denied its constitutionally guaranteed rights to Due Process and confrontation because it was deprived of any opportunity to respond to Complaint Counsel's claims through either a reply or during a hearing.

C. Respondent's Supplemental Statement Was Timely Filed on January 14, 2011.

The Ruling mistakenly states that Respondent's Supplemental Statement was filed January 18, 2011. In fact it was filed on January 14, 2011. *See* Ex. 2. This difference is not trivial. For instance, if the Supplemental Statement had been filed on January 18, then Complaint Counsel would not have been able to respond to it in their Opposition. In fact Complaint Counsel had the full benefit of the Supplemental Statement and took advantage of their awareness of its contents to make numerous misrepresentations and omissions regarding Respondent's good faith efforts to negotiate with Complaint Counsel regarding the Discovery Requests, knowing full well that Respondent would not be able to respond to these allegations. Thus, the Ruling does not properly evaluate the timeliness of Respondent's Motion.

D. The ALJ Had Discretionary Authority to Permit the Motion.

Respondent respectfully draws the ALJ's attention to the discretionary language of Rule 3.22(g) and the Scheduling Order. Rule 3.22(g) provides: "[u]nless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue." FTC Rule 3.22(g) (emphasis added). Respondent notes that the ALJ may exercise his discretion in this matter, and is not obliged to rule against Respondent based

merely on the timeliness requirement. In fact, in the principal case relied upon by Complaint Counsel for the proposition that the Motion was not timely, *Hoescht Marion Roussel, Inc.*, 2000 FTC LEXIS 135 (Aug. 23, 2000), the ALJ exercised such discretionary authority to allow counsel supporting the complaint in that case to file a motion to compel despite it being filed *explicitly* outside of the time specified for filing such a motion by the scheduling order because "fairness dictate[d]" as such. *See id.* at *3-*4 ("fairness dictates that . . . [the] motion will not be denied on grounds that it was not filed within the required time frame."). Perhaps if the ALJ had enjoyed the benefit of the full record before him in this instance, fairness would have dictated granting Respondent's Motion here.

Further, unlike the situation in *Hoescht*, in this case the Scheduling Order did not specify a time limit for filing a motion to compel.

E. The Ruling's Denial of the Motion Is Arbitrary and Capricious.

The Order denying Respondent's Motion is arbitrary and capricious because it exalts a technical procedural requirement over the substance of Respondent's Motion. And as noted above, there is "substantial ground for difference of opinion" regarding the ALJ's application of Rule 3.23(g)'s signing statement requirement, particularly considering that (1) Complaint Counsel made numerous misrepresentations to which Respondent was not permitted a reply, (2) Respondent requested a hearing to respond to these misrepresentations, (3) the ALJ ruled on an issue of timeliness but used the wrong date for its Ruling, and (4) Respondent *did* actually include the type of statement contemplated by Rule 3.23(g) and signed the pleading. To deny Respondent's Motion in light of these factors based on a narrow and contorted interpretation of a technical

procedural requirement is not only arbitrary and capricious but a violation of fundamental notions of fairness, especially given the ALJ's discretion here.

II. Subsequent Review Will Be an Inadequate Remedy as Opposed to This Appeal.

If the matters of fact and law bearing upon this application are not decided here, they will not be decided upon at all. The hearing in this matter is scheduled to begin in slightly more than three weeks. Complaint Counsel has made dubious claims of privilege and offered baseless objections in the course of Complaint Counsel's response to the Discovery Requests of Respondent. In fact, Complaint Counsel's claims of privilege are so tenuous that it only offered legal authority in rebuttal to just one of the four privileges challenged by Respondent: the government informer privilege. Complaint Counsel has not even offered any explanation in response to the challenges in Respondent's Motion to Complaint Counsel's claims of the deliberative process privilege, the law enforcement privilege, and the work product privilege.

If no appeal is allowed at this time, these dubious claims of privilege will be permitted and Respondent will be denied access to numerous documents that are important to its case. Complaint Counsel has identified 31 documents in its response to Respondent's Requests for Production that Complaint Counsel claim that are subject to privileges and to which they have not even provided a sufficient response for maintaining such a privilege.

Complaint Counsel have also wrongfully stymied Respondent's efforts to narrow a number of issues for trial through the use of its Interrogatories and Requests for Admission. Respondent will be at a serious disadvantage at its hearing if the adverse party is permitted to ignore many of its Discovery Requests and deny Respondent the

benefit of certain important information requested by its Interrogatories. Respondent also will be forced to prove up matters that could be settled through a sufficient response to Respondent's Requests for Admission.

Worse, Complaint Counsel has offered material misrepresentations to the ALJ in opposition to Respondent's Motion that Respondent has been unable to respond to and which will have the effect of putting Respondent at a serious disadvantage during the hearing as a result of such questionable tactics. Respondent would also be at a great disadvantage in any appeal following the hearing because the record established at the hearing will be biased in Complaint Counsel's favor because they will have received great latitude in resisting Respondent's attempts to elicit discovery.

WHEREFORE, Respondent requests that the Administrative Law Judge GRANT its Application for Review and certify the denial of Respondent's Motion for an Order Compelling Discovery for an interlocutory appeal.

This the 24th day of January, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.
By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2011, I electronically filed the foregoing 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 a copy 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
oalj@ftc.gov

This the 24th day of January, 2011.

/s/ Alfred P. Carlton, Jr.
Alfred P. Carlton, Jr.

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/ Alfred P. Carlton, Jr.
Alfred P. Carlton, Jr.

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SEARCH: Docket Number/Matter Name: D09343 The North Carolina Board of Dental Examiners — Search

Respondent/Party Name: — Status: Filed

Results:

Matter Number	E-Filing Number	E-Filing Title	E-Filing Date	Matter Name	Respondent/Party	Status
D09343	D09343-0575997e-243a-4974-8bd9-7cc048f8fd21	Exhibits A-D to Motion to Compel	01/11/2011 10:18 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-0f695bf1-1edf-4a89-88b0-ee1c553ef442	Exhibits Part Two	12/17/2010 10:00 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-10832c6c-6244-4454-aaf0-f957b71f0ccc	Respondent's Memorandum in Support of Motion to Compel	01/11/2011 10:21 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-1651c919-762a-48a1-a9de-2cca280ff016	Declaration of M. Jackson Nichols	08/25/2010 09:53 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-1766df57-7f35-446d-9775-3a4722632da5	Respondent's First Set of Requests for Admission to	10/12/2010 04:43 PM	The North Carolina Board of Dental	N.C. State Board of Dental Examiners	Filed

		Complainant FTC		Examiners		
D09343	D09343-1859944a-cbeb-48be-a9b1-efbf3969d19a		12/17/2010 09:56 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-1cc7173c-ec2d-45c0-a0f6-d694489bbcf4	Respondent's Surreply and Motion for Leave to File	01/20/2011 05:08 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-1d0da001-d8fc-4cf4-a1bc-baeab4380888	Respondent's Motion to Disqualify the Commission	01/14/2011 02:20 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-2052ceb7-1675-4f62-aa5b-208bea7ead6e	Respondent's Application for Review of a Ruling re Hearing Location	01/28/2011 05:01 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-28e57a45-4244-4434-a74e-645e530df72e	Motion for Extension of Time for Expert Witness List	11/19/2010 11:40 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-356210c1-77b4-4106-9f51-497f2fecbf1b	Declaration	07/06/2010 05:31 PM	The North Carolina Board of Dental Examiners	Bobby White	Filed
D09343	D09343-390176e5-a3d1-4165-a3c3-5cce5a4eef96	Corrected Motion for an Extension of Time to Respond	10/26/2010 11:40 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-44d53ed1-15b5-49f4-93a3-4f93241ca0c1	Request for Expedited Consideration	11/29/2010 03:02 PM	The North Carolina Board of Dental Examiners	N C State Board of Dental Examiners	Filed
D09343	D09343-4513f7c4-9281-4fa7-8b5c-7e2495c45d8d	Respondent's Motion for Extensions of Time	12/07/2010 01:20 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-	Memorandum	11/03/2010	The North	N C State Board of	Filed

	495298ad-3a4c-49b2-a9bc-64c309e5daaa	in Support of Motion to Dismiss	04:57 PM	Carolina Board of Dental Examiners	Dental Examiners	
D09343	D09343-524d609b-455f-42b1-99e2-ab9b6b19c7cb	Motion for Hearing re Motion to Compel	01/20/2011 04:25 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-56e3abaa-7f2f-4438-b903-94b1f541918c	Exhibits to Respondent's Motion to Disqualify the Commission	01/14/2011 02:23 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-597a9b6c-3c54-453a-9842-5b1b38c6f54d		08/31/2010 04:47 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-5a348706-1db4-47d5-b910-758f0a18b267	Respondent's Motion re Surrebutal Report Giniger	01/13/2011 12:58 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-66ccd9b8-2c08-4dcb-845e-72efab9b77d3	Declaration of Brenner A. Allen	12/20/2010 09:55 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-69bf57e2-7459-4f2c-b93c-e0cc2fcfbc3a	Respondent's Memorandum in Opposition to Complaint Counsel's Motion for Partial Summary Decision	12/10/2010 05:00 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-6e70d917-2d58-4a86-9d62-6c1d5142eacd	Motion for Later Hearing Date	01/18/2011 07:23 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-7327d787-f350-460b-9440-37ac8678b714	Response	07/06/2010 05:34 PM	The North Carolina Board of Dental Examiners	Bobby White	Filed
D09343	D09343-7751b5b4-3eff-	Motion for Extensions of	12/10/2010 11:13 AM	The North Carolina	N.C. State Board of Dental Examiners	Filed

	48e4-a953-c8ffc6e0fa78	Time		Board of Dental Examiners		
D09343	D09343-814211d9-c1f4-4127-9139-039be2e99b39	Respondent's Motion to Change Hearing Location	01/14/2011 02:19 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-88b7bccb-b4c6-4a04-8ae1-3c1bf04eb194	Respondent's Reply Memorandum in Support of Motion to Dismiss	12/20/2010 04:54 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-95db21aa-316f-4d53-83bc-36608832ea12	Motion to Amend Scheduling Order	01/18/2011 07:24 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-9db8d6f9-d941-4849-acc0-9316c12fd884	Motion for Re-Setting Scheduling Conference	07/08/2010 02:39 PM	The North Carolina Board of Dental Examiners	Bobby White	Filed
D09343	D09343-9fb76da0-b70e-4481-b24d-ebc4e4544b42		07/06/2010 01:57 PM	The North Carolina Board of Dental Examiners	Bobby White	Filed
D09343	D09343-a2e0e8a9-3c02-484e-a454-72ca05e065b0		08/25/2010 09:42 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-a525d553-87fe-4747-ae8c-e1d913ef4596	Supplemental Statement	01/14/2011 05:33 PM	The North Carolina Board of Dental Examiners	Bobby White,N C State Board of Dental Examiners;N.C. State Board of Dental Examiners;N C State Board of Dental Examiners;N C. State Board of Dental Examiners	Filed
D09343	D09343-a56db282-e11d-4e64-b9fd-56f7b91d032e	Respondent's Pretrial Brief	01/27/2011 06:22 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed

D09343	D09343-b0419820-c1a4-4276-aeb4-3fd4e1d26821	Motion for Stay of the Proceeding	11/03/2010 04:58 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-b346d703-22bd-41b7-9bb9-86e1d5547057	Motion for Extension of Time	11/02/2010 04:53 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-b3f1a6e5-8812-46d8-ab35-8170425640ed	Respondent's Memorandum in Support of Its Expedited Motions	01/18/2011 07:27 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-b5954843-d4a9-49c5-8b38-01fb3c40c310	Respondent's Response to Supplmental Filing	12/22/2010 05:42 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-b88bd424-2d1f-45ec-ad2e-7a24e51a432c	Declaration of Alfred P Carlton, Jr	08/31/2010 05:12 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-b8b0b6b3-26c8-4d64-ab95-cbb6fe703af8	Motion for Extension of Time	11/29/2010 03:00 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-b9a8b676-b70e-4329-8a52-55bd0629caf3	Respondent's Memorandum in Opposition to Complaint Counsel's Motion for Partial Summary Decision	12/13/2010 12:21 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-bbe92f09-9269-4bbe-85fe-74b0fc274e33	Declaration of Catherine E. Lee	12/20/2010 09:54 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-c06fd3cc-2227-4d98-9c88-6a30770b57c6	Exhibit E - G to Motion to Compel	01/11/2011 10:20 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-		12/20/2010	The North	N.C. State Board of	Filed

	c136f27f-e523-4a8a-91bf-133a151065dc		09:50 AM	Carolina Board of Dental Examiners	Dental Examiners	
D09343	D09343-c5206ec6-6a4d-46a3-8def-794fbb3eb104	Notice of Intent	01/21/2011 04:25 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-d91ab5bf-81be-49c9-909c-6fe5eec42638	Request for Expedited Consideration	11/05/2010 04:20 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-eab40a58-9adc-4ba9-b973-2d8bd4bba94b	Declaration of Carolin D. Bakewell	08/31/2010 10:22 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-eb62dc26-04b0-4f22-8fbc-633ee92142be		08/31/2010 10:18 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-f2f55fd6-770d-45d9-97d9-5b5964b4b61a	Motion to Dismiss	11/03/2010 04:55 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-f337b563-fbaa-4c4a-8ed6-be7a073cdd00	Respondent's Separate Statement of Material Facts	12/17/2010 09:50 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-f759f63c-3235-422b-8d51-014db769a51e	Declaration of Afred P. Carlton, Jr.	12/17/2010 09:52 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-f99981d7-68e6-4008-a090-379d446a4fa3	Respondent's Motion to an Order Compelling Discovery	01/11/2011 10:16 AM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-fb896785-811b-4448-ae32-92f1d894f8d0	Respondent's Objections and Responses to Complaint Counsel's First	10/27/2010 01:03 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed

		Set of Requests for Admission				
D09343	D09343-fc08abff-17b6-44bd-845c-8e0515a410f3	Memorandum in Support of Motion to Dismiss (Corrected)	11/05/2010 01:17 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed
D09343	D09343-fc955096-6a63-4aa2-b743-6c3625e79d09	Respondent's Motion to Strike. Kwoka	01/13/2011 12:59 PM	The North Carolina Board of Dental Examiners	N.C. State Board of Dental Examiners	Filed