

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



In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

**JOINT MOTION FOR
REVISED SCHEDULING ORDER**

Pursuant to Commission Rules of Practice 3.21(c), the Commission's order dated October 26, 2017,¹ and the Court's order dated July 28, 2017,² Complaint Counsel and Respondent Louisiana Real Estate Appraisers Board ("LREAB") jointly respectfully move the Court to enter the attached proposed revised scheduling order.

The Commission issued the Complaint in this action on May 30, 2017, with a notice that the hearing would begin on January 30, 2018.³ After issuing a Scheduling Order on July 6, 2017, the Court entered an order dated July 28, 2017, staying these proceedings for ninety days.

Before the stay expired, Complaint Counsel and LREAB jointly filed a motion with the Commission on October 16, 2016, to extend the stay by an additional thirty days; to reschedule the hearing to begin on May 30, 2018; and to adopt a proposed joint revised schedule of pretrial

¹ Commission Order Continuing Stay and Postponing the Evidentiary Hearing, *In re La. Real Estate Appraisers Bd.*, Docket No. 9374 (October 26, 2017).

² Administrative Law Judge's Order Granting in Part Motion to Stay Part 3 Proceeding, *In re La. Real Estate Appraisers Bd.*, Docket No. 9374 (July 28, 2017).

³ See Notice, Complaint dated May 30, 2017; see Rule 3.11(b)(4) ("[T]he date of the evidentiary hearing shall be . . . 8 months from the date of the issuance of the administrative complaint . . .").

proceedings.⁴ On October 26, 2017, the Commission stayed the proceedings until November 26, 2017, and rescheduled the hearing to commence on May 30, 2018. The Commission further ordered the Court to “determine the timetable for pretrial proceedings before the commencement of the evidentiary hearing on May 30, 2018.”⁵

This proposed scheduling order is the proposed order the parties submitted to the Commission. It reflects the sequence of deadlines set by the Court in its original July 6, 2017, Scheduling Order, adjusted when necessary for weekends and federal holidays. Therefore, Complaint Counsel and Respondent jointly move this Court to enter the attached proposed revised scheduling order.

The proposed scheduling order is attached.

Date: November 9, 2017

Respectfully submitted,

/s/ Geoffrey M. Green
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Counsel Supporting the Complaint

Counsel for Respondent, the Louisiana Real Estate Appraisers Board

⁴ See Joint Expedited Motion to Extend the Stay of Part 3 Administrative Proceedings, Move the Evidentiary Hearing Date, and Adopt the Attached Schedule of Pretrial Proceedings, *In re La. Real Estate Appraisers Bd.*, Docket No. 9374 (October 16, 2017).

⁵ Commission Order Continuing Stay and Postponing the Evidentiary Hearing, *In re La. Real Estate Appraisers Bd.*, Docket No. 9374 (October 26, 2017).

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**[PROPOSED]
REVISED SCHEDULING ORDER**

- December 1, 2017 - Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- January 19, 2017 - Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- February 9, 2018 - Complaint Counsel provides expert witness list.
- February 23, 2018 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- February 26, 2018 - Respondent's Counsel provides expert witness list.
- March 9, 2018 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- March 26, 2018 - Deadline for Complaint Counsel to provide expert witness reports (to be provided by 4 p.m. EDT).
- April 9, 2018 - Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. EDT). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- April 13, 2018 - Complaint Counsel provides to Respondent's Counsel its final

proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

April 23, 2018 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s) (to be provided by 4 p.m. EDT). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).

April 27, 2018 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

April 27, 2018 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).⁶ See Additional Provision 7.

⁶ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

- May 10, 2018 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 10, 2018 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. The Parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits.
- May 11, 2018 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
- May 16, 2018 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 16, 2018 - Complaint Counsel files pretrial brief supported by legal authority.
- May 16, 2018 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- May 17, 2018 - Exchange proposed stipulations of law, facts, and authenticity.
- May 18, 2018 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 23, 2018 - Respondent's Counsel files pretrial brief supported by legal authority.
- May 24, 2018 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits.

To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to

the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

May 30, 2018

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Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2017, I filed the foregoing document electronically using the FTC's E-Filing System and served the following via email:

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

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

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

W. Stephen Cannon
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1001 Pennsylvania Avenue, NW
Suite 1300N
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scannon@constantinecannon.com

Counsel for Respondent Louisiana Real Estate Appraisers Board.

Dated: November 9, 2017

By: /s/ Lisa B. Kopchik
Lisa B. Kopchik, Attorney

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.

Date: November 9, 2017

By: /s/ Lisa B. Kopchik
Lisa B. Kopchik, Attorney