

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

ORIGINAL



_____)
In the Matter of)

The North Carolina Board of)
Dental Examiners,)
Respondent.)
_____)

DOCKET NO. 9343

ORDER DENYING RESPONDENT'S MOTION FOR DISCLOSURE

I.

On January 25, 2011, Respondent filed a motion entitled "Motion for Disclosure of Non-Privileged and Non-Restricted Agency Information" ("Motion"). Complaint Counsel filed an opposition to the Motion on January 28, 2011 ("Opposition").

Upon full consideration of the Motion and Opposition, and as further set forth below, Respondent's Motion is DENIED.

II.

Respondent seeks an order requiring Complaint Counsel to provide Respondent with the following information (the "Information Requested"):

- 1) Clarification of the duties, responsibilities and authority of Complaint Counsel William Lanning;
- 2) Clarification of the duties, responsibilities and authority of Complaint Counsel Richard Dagen;
- 3) The jurisdiction of licensure of each of the individual attorneys designated as Complaint Counsel in this case, and identification of which jurisdiction's ethics rules apply to each such attorney;
- 4) Clarification of the authority of Complaint Counsel Michael J. Bloom, in his capacity as Complaint Counsel and as Assistant Director, Office of Policy Coordination, and the jurisdiction where he is licensed to practice law; and
- 5) Clarification of the authority of Erika Meyers "in the capacity of either Complaint Counsel or as an official of the Commission" and the jurisdiction where she is licensed to practice law.

Proposed Order; Motion ¶ 11, Motion Exhibit 2.

In support of the Motion, Respondent cites the general motions authority under Commission Rule 3.22(a), 16 C.F.R. § 3.22(a). Respondent also states that Interrogatory 8 of Respondent's First Set of Interrogatories requested "[w]hich jurisdiction's bar rules are binding upon the Commission's legal staff including Complaint Counsel" but that Complaint Counsel's answer, which listed the states of licensure of Complaint Counsel's attorneys in the matter, collectively, without connecting those states to any particular attorney on the matter, was insufficient. Motion ¶¶ 3-8. Respondent further contends that it has not been informed of the various Complaint Counsel's "duties, obligations, and authority," Motion ¶¶ 1-2, and the fact that multiple attorneys are acting on the same matter for Complaint Counsel has created communication difficulties. Motion ¶ 9. The Information Requested, Respondent asserts, is "relevant to Counsel for Respondent's ability to undertake prosecution of this case and to effectively represent" Respondent. Motion ¶ 10.

Complaint Counsel opposes the Motion on the grounds that the fact-discovery deadline in this matter passed two months ago; a "motion for disclosure" of agency information is not a discovery method recognized by the Commission's Rules of Practice; and the only alternative rule for obtaining agency information is a Freedom of Information Act request under Commission Rule 4.11.¹

III.

Respondent's Motion is without merit. First, other than the general motions authority under Commission Rule 3.22(a), 16 C.F.R. § 3.22(a), Respondent, although having the burden of persuasion as movant, cites no legal authority permitting one party in litigation to obtain information from the opposing party by way of a "Motion for Disclosure." In contrast, Rule 3.31 clearly contemplates particular methods for a party in litigation to obtain information, i.e., discovery, from the opposing party, including depositions; interrogatories, document requests, and requests for admission. 16 C.F.R. § 3.31(a). Except for information purportedly encompassed by Respondent's Interrogatory 8, it does not appear, and Respondent does not contend, that Respondent attempted to use any discovery method to obtain the Information Requested.

In addition, even with respect to information allegedly lacking in Complaint Counsel's answer to Interrogatory 8, a self-styled "Motion for Disclosure" is not an appropriate vehicle for obtaining relief. Rather, Respondent was required to file a motion to compel under Rule 3.38. However, neither Respondent's previously filed Motion to Compel, submitted January 11, 2011, nor Respondent's Supplemental Statement regarding the January 11, 2011 Motion to Compel, submitted January 18, 2011, made any reference to any deficiency in Complaint Counsel's answer to Interrogatory 8.

Furthermore, Respondent does not offer any factual, legal, or equitable basis for treating its "Motion for Disclosure" as a Motion to Compel an answer to Interrogatory 8. In fact, the timeliness and practicality of such a motion at this stage of the proceedings

¹ The applicability of the Freedom of Information Act to the Information Requested, as alluded to by Complaint Counsel, is beyond the scope of this Order.

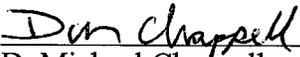
would be questionable, given that Complaint Counsel's answers to interrogatories were served on Respondent on November 18, 2010, the fact-discovery deadline passed November 23, 2010, and the hearing in this matter is scheduled to begin on February 17, 2011. In addition, other procedural requirements of a Motion to Compel are lacking. *See* 16 C.F.R. § 3.38.

Because there is no pending discovery request or Motion to Compel regarding the Information Requested, the issue of whether the Information Requested is subject to discovery by Respondent under the Commission's Rules is not presented, and thus need not, and will not, be addressed.

IV.

For all the foregoing reasons, and after full consideration of the arguments in the Motion and Opposition, Respondent's Motion for Disclosure of Non-Privileged and Non-Restricted Agency Information is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 14, 2011