

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



ORIGINAL

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

FTC FILE No. 17-0008
Docket No. 9374

**ADAMS AND REESE’S AND ROBERT L. RIEGER’S MOTION TO QUASH OR
LIMIT RESPONDENT’S SUBPOENA AD TESTIFICANDUM**

Pursuant to 16 C.F.R. § 3.34 and Rule 3.34(c) of the Rules of Practice for Adjudicative Proceedings before the United States Federal Trade Commission (FTC), Adams and Reese LLP and Robert L. Rieger, Jr., both non-parties to this proceeding, hereby file the following Motion to Quash or Limit the Subpoena Ad Testificandum (the “Subpoena”) issued to Mr. Rieger by Respondent Louisiana Real Estate Appraisers Board (the “Board” or “Respondent”).

I. INTRODUCTION AND FACTUAL BACKGROUND

On May 31, 2017, the FTC filed an Administrative Complaint (the “Complaint” or “Compl.”) against the Board. The Complaint alleges that the Board unreasonably restrained price competition for appraisal services in Louisiana, contrary to Federal antitrust law, by adopting and through its implementation of a regulation requiring the charging of appraisal fees that were equal to or exceeded median fees identified by the Board. Compl. ¶¶ 1-7. The Complaint alleges that because of the Board’s unlawful restraint of price competition, appraisal management companies (“AMCs”) paid more for appraisal services in Louisiana, that is, “above competitive levels.” Compl. ¶ 44.

Robert L. Rieger, Jr. is an attorney and partner of Adams and Reese LLP. Mr. Rieger has represented clients before the Board on occasion. On or about January 31, 2018, counsel for the Board informed Mr. Rieger that the Board intended to subpoena him for a deposition in this matter. On behalf of Mr. Rieger and Adams and Reese LLP, undersigned counsel sent a letter to counsel for the Board to inform her that the Louisiana Rules of Professional Conduct prohibit an attorney from disclosing attorney-client privileged communications and, more broadly, from disclosing any information relating to the representation of a client without client consent, and that the Louisiana Code of Evidence as applied by federal courts in Louisiana, prohibits the subpoena of an attorney unless and until certain conditions are met. (Exhibit 1, Letter to Ms. Broz).

On or about February 23, 2018, counsel for the Board responded that it disagreed with these assertions and served to Mr. Rieger, through undersigned counsel, a Subpoena Ad Testificandum deposition subpoena issued by the Board. (Exhibit 2, Letter and Subpoena to Mr. Rieger). The Subpoena commands appearance for a deposition and does not limit in any fashion the items or topics about which Mr. Rieger is to be deposed. While the Subpoena includes a protective order as an attachment, nothing in the protective order can be deemed a waiver of attorney-client privilege or a Louisiana licensed attorney's duty of confidentiality under Louisiana Rule of Professional Conduct 1.6.

Because undersigned counsel was scheduled to be out of town in the ensuing week, the Board's counsel agreed to defer the deposition date of March 2, 2018 pending confirmation of whether the Firm's affected clients desired to waive or claim the protections to which they are entitled. The affected clients have not given consent to this deposition; hence, the filing of this motion.

II. ARGUMENT

Under the FTC Rules of Practice, a deposition must be “reasonably expected to yield information within the scope of discovery under § 3.31(c)(1). . .” 16 C.F.R. §3.33(a). The scope of discovery is limited to “information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). The ALJ has the discretion and the power to modify a subpoena and limit the scope of the discovery sought. 16 C.F.R. § 3.31(d) (“The Administrative Law Judge may also deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.”).

While undersigned counsel has read the administrative complaint that initiated this proceeding, we do not presume to know what is, and is not, relevant to the claims or defenses in this matter. What is clear, however, is that the Board apparently intends to depose Mr. Rieger about information, actions, and activities undertaken by him on behalf of clients of Adams and Reese LLP whom the Firm has represented before the Board, and interactions with the Board on behalf of those clients. To state it plainly: the Board has subpoenaed a lawyer – essentially, opposing counsel to the Board -- to testify about his representation of Adams and Reese clients before the Board. This cannot stand.

Clearly, Mr. Rieger cannot disclose any information protected by the attorney-client privilege or mental impressions that would constitute work product. But more broadly, any testimony arising from his representation of clients falls squarely within Mr. Rieger’s and the Firm’s duties under Louisiana Rule of Professional Conduct 1.6: “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.” Not surprisingly, no such consent from Adams and Reese’s clients has been provided

since to do so would be to authorize the Board to inquire from those clients' lawyer about matters their lawyer litigated on their behalf before the Board.

Moreover, as stated to the Board's counsel and rejected by them, the subpoena to Mr. Rieger implicates the attorney-client privilege as embodied in Federal Rule of Evidence 501, into which federal courts have incorporated by reference Louisiana Code of Evidence Article 508. *See, e.g., Util. Constructors, Inc. v. Perez*, 2016 U.S. Dist. LEXIS 111206 (E.D. La. 2016); *Plotkin v. North River Ins. Co.*, 2012 U.S. Dist. LEXIS 81054, 2012 WL 2179103 (E.D. La. 2012); *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., LLC*, 2010 U.S. Dist. LEXIS 28708, 2010 WL 1252328 (W.D. La. 2010). Article 508 contains very strict standards for the subpoena of a Louisiana lawyer to testify about his or her representation of a client:

Art. 508. Subpoena of lawyer or his representative in civil cases

A. General rule. Neither a subpoena nor a court order shall be issued to a lawyer or his representative to appear or testify in any civil or juvenile proceeding, including pretrial discovery, or in an administrative investigation or hearing, where the purpose of the subpoena or order is to ask the lawyer or his representative to reveal information about a client or former client obtained in the course of representing the client unless, after a contradictory hearing, it has been determined that the information sought is not protected from disclosure by any applicable privilege or work product rule; and **all of the following**:

- (1) The information sought is essential to the successful completion of an ongoing investigation, is essential to the case of the party seeking the information, and is not merely peripheral, cumulative, or speculative.
- (2) The purpose of seeking the information is not to harass the attorney or his client.
- (3) With respect to a subpoena, the subpoena lists the information sought with particularity, is reasonably limited as to subject matter and period of time, and gives timely notice.

We understand that the evidentiary standards are relaxed in practice before the FTC. We are not aware, however, of any authority from the FTC or elsewhere that eliminates the fundamental obligations of attorneys under the applicable Rules of Professional Conduct or diminishes in any way the application of the attorney-client or work product protections. Insofar as Mr. Rieger is an attorney licensed in the state of Louisiana and is governed by this State's rules governing lawyers, and insofar as his representation of clients before the Board was in this State where the federal courts have applied Louisiana Code of Evidence Article 508 in discovery disputes, we urge the Administrative Law Judge to quash the Subpoena to Mr. Rieger unless and until the standards of Article 508 are met and, even then, only upon clear directions that attorney-client and work product protections must be maintained.

Without question, the effort by a state agency to depose a lawyer who represented clients before that agency about the subject matter of that very representation must be refused. It is hard to imagine an activity with a more chilling effect on advocacy before the Board than to allow the Board's lawyer to depose a lawyer who appears before the Board about that lawyer's representation of clients before the Board. Merely to state this proposition is to reveal its absurdity.

III. CONCLUSION

For the foregoing reasons, Adams and Reese and Robert L. Rieger, Jr. pray that the Subpoena Ad Testificandum to Mr. Rieger be quashed, and for all other just and proper relief. In the event the deposition is allowed to proceed in any fashion, the deponent respectfully prays for an order compelling to Board to pay Mr. Rieger's hourly rate so that the Firm's clients are not burdened with this expense.

Dated: March 6, 2018

Respectfully Submitted,

ADAMS AND REESE LLP

/s/ Don S. McKinney
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One Shell Square – Suite 4500
New Orleans, Louisiana 70139
Telephone: (504) 581-3234
Facsimile: (504) 566-0210
E-Mail: don.mckinney@arlaw.com

CERTIFICATE OF CONFERENCE

I hereby certify that I, counsel for non-parties Adams and Reese and Robert L. Rieger, Jr. conferred with counsel for the Board by phone and in writing in a good-faith effort to resolve the issues raised in this motion, and have been unable to reach agreement on the issues set forth herein.

/s/ Don S. McKinney

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

In the Matter of Louisiana Real Estate Appraisers Board, Respondent	: : : : : : :	FTC FILE No. 161 0068 Docket No. 9374
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**[PROPOSED] ORDER GRANTING ADAMS AND REESE’S AND
ROBERT L. RIEGER’S MOTION TO QUASH OR
LIMIT RESPONDENT’S SUBPOENA AD TESTIFICANDUM**

Upon consideration of Adams and Reese’s and Robert L. Rieger’s Motion to Quash or Limit Respondent’s Subpoena Ad Testificandum, it is hereby:

ORDERED, that the subpoena *ad testificandum* is QUASHED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

ADAMS AND REESE LLP

February 8, 2018

Ms. Kristen Ward Broz
 CONSTANTINE CANNON
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 Suite 1300N
 Washington, DC 20004

Attorneys at Law

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Re: Individual Deposition – In the Matter of the Louisiana Real Estate
 Appraisers Board
 Our File No.: 981-217

Dear Kristen:

Thank you for speaking with me about your request, on behalf of the Louisiana Real Estate Appraiser's Board ("LREAB") to take the deposition of Adams and Reese partner Robert L. Rieger, Jr. in a matter pending against the LREAB before the Federal Trade Commission ("FTC"). You explained that your request to depose Mr. Rieger stems from interactions that he may have had with the FTC in the course of representing one or more clients in matters before the LREAB.

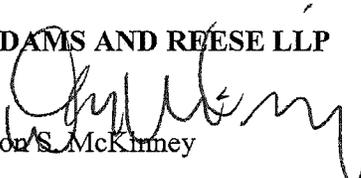
Any subpoena to Mr. Rieger would be subject to Federal Rule of Evidence 501, which incorporates by reference Louisiana Code of Evidence Article 508. *See, e.g., Util. Constructors, Inc. v. Perez*, 2016 U.S. Dist. LEXIS 111206 (E.D. La. 2016); *Plotkin v. North River Ins. Co.*, 2012 U.S. Dist. LEXIS 81054, 2012 WL 2179103 (E.D. La. 2012); *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., LLC*, 2010 U.S. Dist. LEXIS 28708, 2010 WL 1252328 (W.D. La. 2010). Article 508 contains very strict standards for the subpoena of a lawyer to testify about his or her representation of a client. Mr. Rieger's testimony would also be subject to attorney-client and/or work-product privileges and, more broadly, to Louisiana Rule of Professional Conduct 1.6 which states, with very limited exceptions not applicable here, "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent." No such consent from our clients has been provided and none is expected.

Accordingly, we respectfully decline to produce Mr. Rieger for a deposition. If you have contrary authority or believe my analysis is incorrect, please let me know.

With kind regards, I remain

Cordially,

ADAMS AND REESE LLP


 Don S. McKinney

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EXHIBIT

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CONSTANTINE CANNON LLP

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February 23, 2018

BY EMAIL

Mr. Don S. McKinney
 ADAMS & REESE LLP
 One Shell Square
 701 Poydras Street, Suite 4500
 New Orleans, LA 70139

Re: Individual Deposition of Mr. Rieger – In the Matter of the Louisiana Real Estate Appraisers Board

Dear Don:

This correspondence responds to your letter dated February 8, 2018 in which you assert certain privileges that protect Mr. Rieger from appearing for deposition testimony. While we acknowledge that the attorney-client privilege could apply to certain lines of questioning, we respectfully disagree with your blanket assertion of privilege and have attached a subpoena for Mr. Rieger's deposition along with this letter.

First, the FTC Rules of Practice are binding authority; the Commission is not bound by the Federal Rules of Evidence. *FTC v. Cement Institute*, 333 U.S. 683, 705-06 (“[A]dministrative agencies like the Federal Trade Commission have never been restricted by the rigid rules of evidence”); *see also In re American Med. Ass’n*, 94 F.T.C. 701, 965 (1979) (initial decision) (noting that FTC proceeding is governed by the FTC’s Rules rather than the Federal Rules of Evidence). The FTC Rules of Practice allow for more liberal discovery than the Federal Rules of Evidence. Relevant for our purposes, the FTC Rules provide that discovery may be limited to preserve privilege only “as governed by the Constitution, any applicable act of Congress, or the principles of the common law as they may be interpreted by the Commission in light of reason and experience.” FTC Rule 3.31(c)(2). Our research has uncovered no recognition by the Commission of any privilege analogous to Louisiana Code of Evidence Article 508 [“LCE 508”]. *Cf. In re 1-800 Contacts*, 2016 WL 7634657 (Dec. 26, 2016) (Chappell, ALJ) (“a conclusory, blanket assertion of privilege is not a sufficient basis for denying a request for discovery”).

Second, even under the Federal Rules of Evidence, LCE 508 would not apply to the present case. The Federal Rules of Evidence would incorporate the Louisiana Code of Evidence only when “*state law supplies the rule of decision.*” Fed. R. Evid. 501 (emphasis added). Here,

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EXHIBIT

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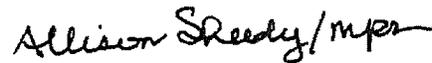
February 23, 2018

Page 2

a hypothetical district court would not apply Louisiana law because subject-matter jurisdiction would be supplied via federal question (the FTC Act). *See* Administrative Complaint, *In re Louisiana Real Estate Appraisal Board* (“the Commission having reason to believe that [the LREAB] has violated Section 5 of the [FTC] Act”). Thus, state law does not supply the rule of decision here. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) (federal court sitting in diversity jurisdiction must apply state substantive law to resolve claims under state law); *cf. also*, *e.g.*, *Util. Constructors, Inc. v. Perez*, 2016 U.S. Dist. LEXIS 111206 (E.D. La. 2016) (incorporating LCE 508 under Federal Rules of Evidence in diversity action); *Plotkin v. North River Ins. Co.*, 2012 U.S. Dist. LEXIS 81054 (E.D. La. 2012) (same); *Keybank Nat’l Ass’n v. Perkins Rowe Assocs., LLC*, 2010 U.S. Dist. LEXIS 28708 (W.D. La. 2010) (same).

Accordingly, we have enclosed with this letter a subpoena for Mr. Rieger, as his deposition “is reasonably expected to yield information within the scope of discovery.” FTC Rule 3.33(a). Please note that the date is a placeholder and we are willing to work with you to come up with a convenient date, prior to our March 16, 2018 close of discovery.

Sincerely,



Allison F. Sheedy

Enclosure



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(a), 16 C.F.R. §3.34(a)(2010)

1. TO Robert Rieger Adams & Reese LLP Chase North Tower 450 Laurel St., Suite 1900 Baton Rouge, LA 70801	2. FROM <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION Baton Rouge, LA	4. YOUR APPEARANCE WILL BE BEFORE Seth Greenstein, or designee
5. DATE AND TIME OF DEPOSITION March 2, 2018, at 9:00am	

6. SUBJECT OF PROCEEDING

In the Matter of the Louisiana Real Estate Appraisers Board, Dkt. No. 9374

7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell <p style="text-align: center;">FEDERAL TRADE COMMISSION WASHINGTON, D.C. 20580</p>	8. COUNSEL AND PARTY ISSUING SUBPOENA Seth Greenstein, or designee Constantine Cannon 1001 Pennsylvania Ave NW Ste 1300N Washington, DC 20004 (202) 204 3500
--	--

DATE SIGNED 02/15/2018	SIGNATURE OF COUNSEL ISSUING SUBPOENA
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

PUBLIC

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

In the Matter of)	
)	
Louisiana Real Estate Appraisers Board,)	
)	
Respondent.)	DOCKET NO. 9374
)	

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 31, 2017

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9374" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9374" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.
7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.
8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.
9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Notice of Electronic Service

I hereby certify that on March 06, 2018, I filed an electronic copy of the foregoing Proposed Order, Exhibit 1 and Exhibit 2, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on March 06, 2018, I served via E-Service an electronic copy of the foregoing Proposed Order, Exhibit 1 and Exhibit 2, upon:

Lisa Kopchik
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Complaint

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