

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 05:008:CF

IN RE:)
)
ADVANCE AMERICA, CASH ADVANCE)
CENTERS OF NORTH CAROLINA, INC.)
)

PETITIONERS' JOINT MOTION TO QUASH
AND FOR A PROTECTIVE ORDER

NOW COMES the Office of the Commissioner of Banks ("OCOB"), and the Attorney General (hereinafter referred to as "the Petitioners"), and jointly move the Commissioner of Banks ("Commissioner"), pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure, for a protective order and/or for an order to quash the taking of depositions of Petitioners' counsel. In support of this motion, the Petitioners state:

1. On April 18, 2005, the Respondent served the Petitioners with Notices of Deposition for the following individuals: (1) Roy A. Cooper, III, Attorney General of North Carolina; (2) Joshua N. Stein, Senior Deputy Attorney General; (3) L. McNeil Chestnut, Special Deputy Attorney General; (4) Philip A. Lehman, Assistant Attorney General; and (5) M. Lynne Weaver, Assistant Attorney General.

2. Mr. Cooper is the Attorney General of North Carolina, and as such, is a member of the Council of State, and is the head of the North Carolina Department of Justice, the chief law enforcement agency for the State of North Carolina. As more fully set forth in Petitioners' Memorandum of Law in Support of Petitioners' Motion to Quash and for a Protective Order, which is submitted with this motion and incorporated herein, well-established case law holds that top executive department officials should not, absent *extraordinary* circumstances, be called to testify as witnesses because doing so would impose enormous burdens on officials and leave them with no time to perform their governmental functions. As head of the Attorney General's Office, if Mr. Cooper were called to testify every time the Office engaged in litigation, he would be utterly unable to perform any of his duties. Moreover, the Respondent has made no showing of any need, much less a compelling need, of Mr. Cooper's deposition, and, therefore, Mr. Cooper's deposition should be quashed.

3. Messrs. Stein, Chestnut and Lehman, and Ms. Weaver have all made an appearance in this case as counsel for the Petitioners. Mr. Chestnut serves as counsel for the Office of the Commissioner of Banks. Messrs. Stein and Lehman and Ms. Weaver serve as counsel for the Attorney General, Intervenor in this case. As set forth more fully in Petitioners' Memorandum of Law in Support of Joint Motion to Quash and for a Protective Order, courts have held that conducting

depositions of opposing attorneys is unduly burdensome and “constitutes an invitation to delay, disruption of the case, harassment, and perhaps disqualification of the attorney.” N.F.A. v. Riverview Narrow Fabrics, Inc., 117 F.R.D. 83, 85 (M.D. N.C. 1987). As a result, such depositions are rarely countenanced. Further, Respondent is required to show, when seeking to depose opposing counsel, that there is *no other means* by which the information sought can be obtained, that the information sought is relevant and is not privileged, and that the information is crucial to the preparation of its case. See Petitioners’ Memorandum of Law in Support of Joint Motion to Quash and for a Protective Order. Respondent has made no such showing in this case and cannot make this showing.

RELIEF REQUESTED

WHEREFORE, pursuant to Rule 26(c), the Petitioners pray for a protective order that the deposition notices of Attorney General Roy Cooper, Senior Deputy Attorney General Joshua N. Stein, Special Deputy L. McNeil Chestnut, and Assistant Attorney Generals Philip A. Lehman and M. Lynne Weaver, be quashed.

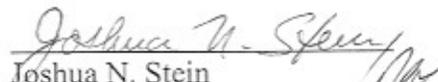
Respectfully submitted, this the 25th day of April, 2005.



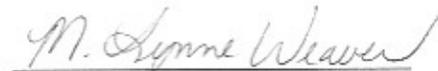
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CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing PETITIONERS' JOINT MOTION TO QUASH AND FOR A PROTECTIVE ORDER via electronic mail and by placing a copy of the same in the United States Post Office at Raleigh, North Carolina, postage prepaid and addressed to:

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This the 25th day of April, 2005.



L. McNeil Chestnut
Special Deputy Attorney General