

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 INS 738

BLUE CROSS AND BLUE SHIELD )  
OF NORTH CAROLINA, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
NORTH CAROLINA STATE )  
HEALTH PLAN FOR )  
TEACHERS AND STATE )  
EMPLOYEES )  
 )  
Respondent )  
 )  
and )  
 )  
AETNA LIFE INSURANCE )  
COMPANY )  
 )  
Respondent-Intervenor. )

REPLY IN FURTHER SUPPORT OF  
AMENDED MOTION TO DISQUALIFY

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NOW COMES Respondent (“Respondent” or “SHP”), and hereby respectfully submits this brief Reply in Further Support of its Amended Motion to Disqualify the firm of Robinson, Bradshaw & Hinson, P.A. (“RBH”) as counsel for Petitioner (“Petitioner” or “BCBS”) for the limited purpose of addressing BCBS statements regarding the standard set out in the SHP’s Amended Motion.

BCBS’s Response relies on *Worley v. Moore*, 370 N.C. 358, 807 S.E.2d 133 (2017) to argue the SHP cited an incorrect standard. (BCBS Resp. pp. 10-12). BCBS overstates *Worely’s* application to the Amended Motion. In *Worley* the North Carolina Supreme

Court overturned the trial court's disqualification of counsel because "the trial court improperly determined disqualification in reliance on the former client's subjective judgment, which Rule 1.9(a) prohibits, rather than objectively comparing the facts and circumstances of both representations." 370 N.C. 358, 367, 807 S.E.2d 133, 140 (2017).

Unlike the trial court in *Worley*, the SHP has not asked this Court to disqualify RBH merely based either on a subjective belief that RBH's past representation of the Treasurer and Department is substantially related to this matter, or the appearance of impropriety. Rather, the Amended Motion objectively details why RBH's past representation of the Treasurer through the Department as a fiduciary is substantially related to the present matter alleging error in the Treasurer's actions as a fiduciary. (*See* Am. Mo. ¶¶ 40-60).

Although the *Chemcraft* case was noted early in the Amended Motion, Respondent does not rely on the "appearance of impropriety standard" as BCBS argues. As noted in BCBS's Response, under Rule 1.9(a) the SHP must show that RBH's prior representation of the Treasurer and Department is substantially related to the current matter, and the current representation is materially adverse to the Treasurer's and Department's interests. (*See* Response, pp. 11-12). The Amended Motion's argument section regarding Rule 1.9(a) objectively details both elements. (*See* Am. Mo. ¶¶ 39-60). Nowhere does the SHP rely on the "appearance of impropriety" as a basis for disqualification.

Finally, RBH incorrectly states that the case law requires a movant to prove each element of a balancing test formula to succeed on motion to disqualify. None of the cases cited in BCBS's Response impose such an obligation. Any balancing of factors for or against disqualification is in the Court's discretion. *Worley*, 370 at 363, 807 S.E.2d at 138.

WHEREFORE, Respondent respectfully requests that the firm of Robinson, Bradshaw & Hinson, P.A. be disqualified as counsel, and respectfully requests to be heard on its Amended Motion to Disqualify if the Court cannot grant such motion without a hearing.

This the 8th day of June, 2023.

NC State Health Plan

/s/ J. Benjamin Garner

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## **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was uploaded electronically with the Office of Administrative Hearings, causing electronic service, as defined in 26 N.C.A.C. 03 .0501(4), to be made upon the following:

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This the 8th day of June, 2023.

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