

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Richard W. Possett, Sr., d/b/a The Navigator Group,

Respondent.

ODS File No. 11-076

**DEPARTMENT'S REPLY IN SUPPORT OF ITS OBJECTION TO INCLUSION OF  
DEPARTMENT ATTORNEY ON WITNESS LIST OF RESPONDENT AND MOTION IN  
LIMINE TO EXCLUDE TESTIMONY OF DEPARTMENT ATTORNEY**

On September 21, 2012, the Oklahoma Department of Securities ("Department") filed an objection to Respondent's inclusion of the Department's attorney-of-record, Terra Bonnell, on his preliminary witness list filed August 21, 2012,<sup>1</sup> and a motion for the issuance of an order excluding the testimony of the Department's attorney at deposition or hearing ("Motion in Limine"). Respondent filed a response to the Department's Motion in Limine on September 28, 2012.

In his response to the Department's Motion in Limine, Respondent claimed that he should have "the right to confront his accuser" and thus should be able to depose the Department's attorney and call her as a witness at a hearing. Respondent has distorted the right of confrontation provided in the Sixth Amendment to the U.S. Constitution and made applicable to the States by the Fourteenth Amendment. See *California v. Green*, 399 U.S. 149, 150-51 (1970) (stating that the Sixth Amendment right of confrontation is made applicable to the States by the Fourteenth Amendment).

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<sup>1</sup> On September 28, 2012, Respondent filed a final witness list that identified both Terra Bonnell and the Administrator of the Department as witnesses to be called at hearing.

The right of confrontation is the right of the accused “to be confronted with the witnesses against him” in a criminal prosecution. U.S. Const. Amend. VI. The right applies to “**witnesses**’ against the accused—in other words, those who ‘bear testimony’” (emphasis added). *Crawford v. Washington*, 541 U.S. 36, 51 (2004). In addition to criminal prosecutions, the right of confrontation applies to cases “where administrative and regulatory actions [are] under scrutiny.” See *Greene v. McElroy*, 360 U.S. 474, 497 (1959).

Assuming *arguendo* that this proceeding is the type of administrative proceeding in which the right of confrontation applies, Respondent still does not have a constitutional right to confront the Department’s attorney-of-record because she is not a witness against him. The Department’s attorney-of-record will not be called as a witness against Respondent at the hearing nor has she made any out-of-court testimony or statement that will be presented as evidence against Respondent at the hearing. Respondent does not have a constitutional right to confront a non-witness.

For the reasons stated above and in the Department’s Motion in Limine, the Department respectfully requests the issuance of an order excluding the testimony of the Department’s attorney-of-record, Terra Bonnell, at deposition and hearing.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing DEPARTMENT'S REPLY IN SUPPORT OF ITS OBJECTION TO INCLUSION OF DEPARTMENT ATTORNEY ON WITNESS LIST OF RESPONDENT AND MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DEPARTMENT ATTORNEY was emailed and mailed this 3<sup>rd</sup> day of October, 2012, to:

Richard W. Possett, Sr.  
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rpossett@att.net

  
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Terra Shamas Bonnell