

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 ON POST TRIAL BRIEFS

I. Post trial briefing schedule

Pursuant to Commission Rule 3.46(a), the deadlines for post trial briefs are as follows:

- | | |
|----------------|---|
| April 20, 2011 | Deadline for filing concurrent post trial briefs, proposed findings of fact, and conclusions of law |
| May 2, 2011 | Deadline for filing concurrent reply briefs and replies to proposed findings of fact |

The parties shall serve each other with electronic copies of all post trial pleadings immediately after filing such pleadings.

The parties shall serve the Office of Administrative Law Judges (OALJ) with two hard copies of all post trial briefs and an electronic version of all post trial briefs. The electronic version shall be in MS-Word (.doc) format. Electronic service on the OALJ shall be made to OALJ@ftc.gov.

II. Mandatory rules for post trial briefs

The following requirements apply to post trial briefs, proposed findings of fact, conclusions of law, post trial reply briefs, and replies to proposed findings of fact and shall be followed:

- 16 C.F.R. § 3.46 sets forth express requirements for proposed findings of fact and conclusions of law.

• 16 C.F.R. § 3.45(e) sets forth express requirements for filing briefs that include information that has been granted *in camera* treatment. Parties shall clearly indicate material that has been granted *in camera* treatment by use of braces and bold font in the *in camera* versions of their briefs and proposed findings. In addition, parties shall indicate that the exhibit or transcript page is *in camera*. An example follows:

Company A and Company B each submitted budget pricing on the Texas project. Company A's price was **{\$200,000}** while Company B's price was **{\$300,000}**. (CX 1000 at ABC 200321, *in camera*).

• All proposed findings of fact shall be supported by specific references to the evidentiary record. All conclusions of law, including, but not limited to, liability and the proposed remedy, shall be supported by applicable legal authority. The parties shall provide briefing in support of or in opposition to the proposed order attached to the Complaint in this case.

• Do not cite to testimony for the truth of the matter asserted if the testimony was admitted over objection for a purpose other than for the truth of the matter asserted. If such testimony is cited, the party shall indicate in its brief or proposed findings that the testimony was elicited for a purpose other than for the truth of the matter asserted.

• Do not cite to evidence that was admitted for a limited purpose for any purpose other than the theory under which it was admitted.

• Do not cite to documents that are not in evidence, documents that have been withdrawn, or documents that have been rejected.¹

• Do not cite to demonstrative exhibits as substantive evidence.

• Do not cite to an offer of proof or testimony or documents that were elicited on an offer of proof.

• Violations of the requirements of this Order should be pointed out by opposing counsel in the reply brief or reply to proposed findings of fact.

¹ The parties are directed to comply with the Order Granting Respondents' Motion to Strike, issued in *Chicago Bridge & Iron Co.*, Docket 9300 (June 12, 2003), <http://www.ftc.gov/os/adjpro/d9300/030612aljdrantrespmotostrike.pdf>.

- When citing to trial testimony, the parties shall identify that testimony by the witness' name, the letters "Tr." and the transcript page number. Do not provide line numbers or the word "at" before the transcript page number. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (Smith, Tr. 1098). If more than one source is used for the same proposition, the format that shall be used is (Smith, Tr. 1098; Jones, Tr. 153).

- When citing to deposition testimony or testimony from an investigational hearing transcript that was admitted in evidence, the parties shall identify that cite by the exhibit number, and then, in parentheses, the deponent's name, the letters "Dep." or "IHT", and the transcript page number. Do not provide line numbers. Do not use first initials unless there is more than one witness with the same last name. The citation following the statement of fact shall be in parentheses. An example of the format that shall be used is: (RX 100 (Smith, Dep. at 1098)).

- When citing to deposition testimony or testimony from an investigational hearing transcript that was admitted in evidence, and the opposing party has an objection to the use of such testimony, the opposing party shall point out its objection to such excerpt in its reply to the proposed finding, or such objection shall be deemed waived.

- Do not use "*Id.*" as a cite in the proposed findings of fact or the reply findings of fact.

- Do not cite to more than one copy of the same document. (*I.e.*, if RX 100 and CX 200 are different copies of the same document, cite to only one exhibit number.)

- Reply briefs shall be limited to refuting issues raised by the opposing side and should not be used merely to bolster arguments made in the opening post trial briefs.

- Reply briefs shall reply to the arguments in the same order as the arguments were presented by the opposing party in its opening brief.

- Reply findings of fact shall set forth the opposing party's proposed finding of fact in single space and then set forth the reply in double space. Reply findings of fact shall be numbered to correspond to the findings that the reply findings are refuting and shall use the same outline headings as used by the opposing party in its opening proposed findings of fact. If you have no specific response to the opposing party's proposed finding of fact, set forth the opposing party's proposed

finding of fact and then state that you have no specific response or do not disagree.

- An example of the format for reply findings that shall be followed is:

39. Jarrett Inc. was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, publicly traded on the American Stock Exchange, with its principal place of business at 1740 Lake Needwood Drive, Suite 300, Arlington, VA, 22201. (CX 328 at 001253; CX 21 at 1003; Hanson, Tr. 6732).

Response to Finding No. 39:

Respondents have no specific response.

- Reply findings of fact should be used only to directly contradict the other side's proposed findings, and should not be used merely to restate the proposition in language which is more favorable to your position.
- Briefs shall be spiral bound. Velo binding shall not be used.

III. Exhibits

The parties shall provide the OALJ with one set in hard copy of all exhibits. The parties are to confer to ensure that duplicate sets of exhibits that are used by both sides are not provided. Binders containing the exhibits shall not exceed three inches. The parties shall provide this set of exhibits within five business days of this order.

The parties shall provide the OALJ with one set of exhibits in electronic format with each exhibit saved as a distinct document. In addition, the parties shall provide the OALJ with deposition transcripts or portions thereof that have been admitted into evidence as exhibits, in an OCR (searchable) electronic format, such as e-transcript, ASCii, Word or RTF. The parties shall provide this set of exhibits within five business days of this order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 30, 2011