

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 GRANTING MOTION TO STRIKE
AFFIDAVITS FROM RECORD**

On June 30, 2011, Respondent filed a Motion to Strike from the Record the Affidavits of Michael J. Bloom and Tejasvi Srimushnam (“Motion”). Complaint Counsel submitted an opposition to the Motion on July 8, 2011. The documents at issue are a Declaration of Michael J. Bloom, and a Declaration of Tejasvi Srimushnam, two members of Complaint Counsel’s legal team. The documents were attached to Complaint Counsel’s Post-Trial Reply to Respondent’s Post-Trial Proposed Findings of Fact and Conclusions of Law, submitted on May 5, 2011.

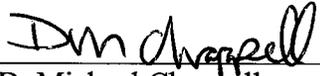
Respondent contends that the declarations are improper because they were submitted after the close of the record in this matter, on March 30, 2011. Complaint Counsel does not dispute that the declarations were submitted after the record was closed, but states that it submitted the declarations in order to respond to certain of Respondent’s proposed findings concerning communications between Complaint Counsel and a witness, Mr. Brian Runsick, which Respondent contends are relevant to a claim Respondent may make under the Equal Access to Justice Act, 5 U.S.C. § 504. *See* Respondent’s Proposed Findings of Fact and Conclusions of Law, at 61.

As Complaint Counsel acknowledges, the witness testified at the hearing in this matter regarding his communications with Complaint Counsel, over objection, based upon Respondent’s assertion that the testimony was relevant to a potential claim under the Equal Access to Justice Act, 5 U.S.C. § 504, pursuant to Commission Rule of Practice 3.81. 16 C.F.R. § 3.81. Runsick, Tr. 2124-2131. Complaint Counsel had the opportunity to, but did not, rebut the witness’ testimony before the conclusion of the hearing. In addition, Complaint Counsel did not seek to correct the record, prior to the record being closed on March 30, 2011. *See* Rule 3.44(c). Finally, Complaint Counsel did not move to reopen the record in order to submit the declarations. *See* Rule 3.51(e) (“Administrative Law Judge may reopen the proceeding for the reception of further

evidence for good cause shown.”). For all these reasons, it was improper for Complaint Counsel to submit the challenged declarations, and the Motion to Strike is therefore GRANTED.

It is hereby ORDERED that the Declaration of Michael J. Bloom, and the Declaration of Tejasvi Srimushnam, attached to Complaint Counsel’s Post-Trial Reply to Respondent’s Post-Trial Proposed Findings of Fact and Conclusions of Law, submitted on May 5, 2011, after the close of the record, shall be disregarded.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: July 14, 2011