

**IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

TRIAL PRACTICES, INC.,

CASE NO.: SC17-2058

Petitioner,

Lower Tribunal No(s).:

vs.

2D13-6051; 2D14-86;

HAHN LOESER & PARKS, LLP, as
substitute party for Jack J. Antaramian,

292006CA005366A001HC

Respondent.

**PETITIONER’S MOTION TO STRIKE PORTIONS OF
RESPONDENT’S APPENDIX AND PORTIONS OF THE ANSWER
BRIEF WHICH RELY ON THE STRICKEN RECORD**

Petitioner, Trial Practices, Inc. (“TPI”), pursuant to Rule 9.200, Florida Rules of Appellate Procedure, moves this Court to strike portions of (1) the record previously stricken by the Second District Court of Appeal, (2) Respondent’s Appendix which are not part of the record of the lower tribunal cases, and (3) the Answer Brief which rely on documents that are not part of the record on appeal and cannot be considered by this Court.

Portions of Respondent’s Appendix and Answer Brief to be stricken

On June 8, 2018, Hahn Loeser & Parks, LLP (“Hahn Loeser”) filed its Appendix to Respondent’s Answer Brief on the Merits (“Respondent’s Appendix”). This appendix contains records previously stricken by the Second District and additional documents which are not part of the record of

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the lower tribunal Case Nos. 2D13-6051, 2D14-86, and 2006-CA-005366 (“Lower Tribunal Record”).

Appendix Item G (Respondent’s Motion to Supplement the Appellate Record in L.T. Case Nos. 2D13-6051 and 2D14-86 ... with the Appendix), found in Respondent’s Appendix at pages 265-311, should be stricken pursuant to the Second District’s Order dated August 25, 2016. (DCA R.1303)¹ (“The appellee Hahn, Loeser & Parks, LLP’s motion to supplement the appellate record is denied. The attachments to the motion are stricken.”). See Exhibit 1. On July 26, 2016, Hahn Loeser moved the Second District to supplement the record in Case Nos. 2D13-6051/2D14-86. (DCA R.1247-1293, attachments included). TPI responded in DCA R.1295-1299, and the Second District denied Hahn Loeser’s motion to supplement the record in DCA R.1303. Appendix Item G (*citing* DCA R.1247-1293), therefore, is not part of the Lower Tribunal Record and should be stricken from Respondents’ Appendix and the record in SC17-2058.

Hahn Loeser disregarded the Second District’s Order (Exhibit 1) and relied upon and cited to Appendix Item G in the Answer Brief at pages 6-7

¹ Citations to the record of the Second District in Case Nos. 2D13-6051 and 2D14-86 are designated by “DCA R.” and followed by page numbers. References to the Circuit Court record in Case No. 2006-CA-005366 are designated by “R.” and followed by page numbers.

and 31-32. Accordingly, the paragraphs in pages 6-7 and 31-32 which rely on Appendix Item G (DCA R.1247-1293) should be stricken from Answer Brief.

Appendix Item H (Excerpts from Petitioner’s Mock Trial Results report in the *Nassif* case...), found in Respondent’s Appendix at pages 312-314, is not part of the Lower Tribunal Record, as evidenced by Respondent’s failure to reference the record in its “Index to Appendix.” Nor has Hahn Loeser moved this Court to supplement the record under Fla. R. App. P. 9.200(f), which would have been futile. Rule 9.200, *Committee Notes* (“The rule is not intended to cure inadequacies in the record that result from the failure of a party to make a proper record during the proceedings in the lower tribunal.”). Appendix Item H, therefore, should be stricken from the Respondents’ Appendix to the Answer Brief and the record in SC17-2058.

Hahn Loeser relied upon and cited to Appendix Item H in the Answer Brief at pages 18, ¶(ii), and 19. Accordingly, these references and citations should be stricken from Answer Brief.

Memorandum of Law

Appellate review is confined to the record on appeal. *Kelley v. Kelley*, 75 So. 2d 191 (Fla. 1954) (holding that it is elemental that in reviewing the actions of circuit courts, a reviewing court is confined to the record

produced); *Sheldon v. Tiernan*, 147 So. 2d 593 (Fla. 2d DCA 1962) (citing *Kelley*); *Bowers v. State*, 6 So.3d 79 (Fla. 1st DCA 2009) (“It is axiomatic that appellate review is confined to the record on appeal.”) (citing *Sheldon*); *Thornber v. City of Fort Walton Beach*, 534 So. 2d 754, 755 (Fla. 1st DCA 1988) (citing *Sheldon* and *Altchiler v. Dep’t of Prof’l Regulation Div. of Professions, Bd. of Dentistry*, 442 So. 2d 349, 350 (Fla. 1st DCA 1983) (“That an appellate court may not consider matters outside the record is so elemental there is no excuse for an attorney to attempt to bring such matters before the court.”)).

Florida appellate courts consistently decline to review material not found in the record. *Wynn Drywall, Inc. v. Aequicap Program Adm’rs, Inc.*, 953 So. 2d 28, 30 (Fla. 4th DCA 2007) (“We decline to consider the exhibits attached to Aequicap’s answer brief that are not found in the record.”) (citing *Thornber*); *Hughes v. Enterprise Leasing Co.*, 831 So. 2d 1240 (Fla. 1st DCA 2002) (“As it is not a part of the record but merely attached to appellee’s brief, this Court cannot review the document on appeal.”). Respondent’s Appendix Items G and H are not part of the Lower Tribunal Record and the Court, therefore, should grant the motion to strike.

WHEREFORE, for the foregoing reasons, Petitioner, Trial Practices, Inc., respectfully request that this Court enter an order striking Respondent’s

Appendix Item G and Appendix Item H, and the paragraphs of the Answer Brief found at pages 6-7, 18-19 and 31-32 which rely upon Appendix Item G (at DCA R.1247-1293) and Appendix Item H.

Dated: June 12, 2018.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2018, a true and correct copy of the above and foregoing has been filed via the Florida Court's E-Filing Portal which will send an Electronic Mail notification of same to the following:

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By: /s/ G. Donovan Conwell, Jr.
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

August 25, 2016

******CONSOLIDATED******

CASE NO.: 2D13-6051

CASE NO.: 2D14-86

L.T. No. : 06-CA-005366

Trial Practices, Inc.

v. Hahn, Loeser & Parks, L L P Et Al.,

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

The appellee Hahn, Loeser & Parks, LLP's motion to supplement the appellate record is denied. The attachments to the motion are stricken. .

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

G. Donovan Conwell, Jr., Esq.	G. Wrede Kirkpatrick, Esq.	Edmond E. Koester, Esq.
Matthew M. Jackson, Esq.	Joseph D. Stewart, Esq.	Leo J. Salvatori, Esq.
Rebecca M. Vaccariello, Esq.	Pat Frank, Clerk	

ec


Mary Elizabeth Kuenzel
Clerk

