

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR,

Complainant,

Case No. SC20-1777

v.

RAYMOND B. MITCHELL,

The Florida Bar File No.  
2019-10,038(20A)

Respondent.

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**THE FLORIDA BAR'S RESPONSE TO RESPONDENT'S  
MOTION TO SUPPLEMENT THE RECORD - AFFIDAVITS**

Pursuant to Rule 9.300(a), Florida Rules of Appellate Procedure, Complainant The Florida Bar ("TFB") responds in opposition to Respondent Raymond B. Mitchell's ("Respondent") Motion to Supplement the Record - Affidavits (the "Motion"), and states as follows:

1. Through the Motion, Respondent seeks to supplement the existing record in this disciplinary proceeding with: (1) his own affidavit, signed on October 13, 2021; and (2) exhibits he attached to his answer to TFB's complaint, including the affidavit of his former paralegal, Teresa Campoli.

2. With respect to Respondent's October 13, 2021 affidavit, under the Rules Regulating The Florida Bar ("RRTFB"), the record on

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review before this Court consists of only “[t]he report and record filed by the referee.” RRTFB 3-7.7(c)(2). As such, “this Court can only review the record which was properly before th[e] referee.” *Fla. Bar v. Horowitz*, 697 So. 2d 78, 83 (Fla. 1997). Thus, this Court should deny the Motion to the extent it seeks to admit this new affidavit.

3. Respondent also attached his new affidavit to his October 13, 2021 Notice of Service of the Transcripts of the Trial. For the same reasons as outlined above, this new affidavit should not be considered and should be struck from that pleading.

4. With respect to Respondent’s request to admit “all the Exhibits he had attached” to his answer, “including Exhibit B, the Affidavit of Teresa Campoli, his former paralegal,” many of those attachments are already in the record or, in the case of Ms. Campoli’s affidavit, was appropriately struck.<sup>1</sup>

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<sup>1</sup> Although it was appropriately struck and disregarded by the Referee, Ms. Campoli’s affidavit remains attached to the answer that Respondent filed to the complaint and is included as Respondent’s proposed Exhibit 38 as part of the pleadings in this case, in addition to being attached to the Motion. Thus, to the extent that Respondent is arguing that it was error for the Referee to strike Ms. Campoli’s affidavit, the document is available for the Court to review to assess that argument.

5. With respect to the affidavits of Caridad Moulton-Miran, Celeste Rabedeau, and Travis Varney, they are already in the record: (a) as Exhibit A to Respondent's answer (see Tabs 5, 6, and 7 of the Second Amended Index of Record ("Index")); and (b) as Respondent's Exhibits 18, 19, and 35, admitted at the final hearing over TFB's objections (see Tab 38 of the Index, including Respondent's Exhibits 18 (Moulton-Miran Affidavit), 19 (Varney Affidavit), and 35 (Rabedeau Affidavit); see also Apr. 23, 2021 Hearing Tr. at 21:9-13, 22:14-20, 34:14-18). The motion to disqualify or recuse that Respondent attaches to his Motion was also entered into evidence at the final hearing as Respondent's Exhibit 20. (Apr. 23, 2021 Hearing Tr. 23:5-9.)

6. With respect to Ms. Campoli's affidavit (Respondent's proposed Exhibit 38 below), the Referee appropriately declined to admit it into evidence and struck it from Respondent's answer because it details settlement negotiations irrelevant to these disciplinary proceedings. (Apr. 23, 2021 Hearing Tr. at 40:10-41:25.) The affidavit purports to recount a conversation between Respondent and a member of a TFB grievance committee and injects the affiant's own speculation as to what the grievance committee member thought

and believed. In general, settlement negotiations are inadmissible, *see, e.g., Sullivan v. Galske*, 917 So. 2d 412, 414 (Fla. 2d DCA 2006); § 90.408, Fla. Stat., but regardless, any discussions regarding the potential resolution of TFB's complaint against Respondent have nothing to do with the task before this Court, which is to decide whether the finding of guilt by the Referee was correct and if so, what discipline is appropriate. Ms. Campoli's affidavit was expressly not considered by the Referee and is thus not appropriately before this Court. (Apr. 23, 2021 Hearing Tr. at 41:10-17); *see also* RRTFB 3-7.7(c)(2). To the extent that Respondent is challenging the Referee's decision to strike and disregard Ms. Campoli's affidavit, the document is already in the pleadings file before the Court and need not be added by means of a motion to supplement the record.

For all those reasons, TFB asks the Court to deny Respondent's Motion.

Respectfully submitted on October 19, 2021.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 19, 2021, a true and correct copy of the forgoing was filed through the Florida Courts E-Filing Portal and served by email to the following:

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