

Decision No. R14-0361-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0195EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ALL ACCESS TRANSPORTATION, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING RESPONDENT TO SHOW
CAUSE OR TO RETAIN LEGAL COUNSEL
IN THIS MATTER, ESTABLISHING PROCEDURAL
SCHEDULE, SHORTENING RESPONSE
TIME TO DISCOVERY, SHORTENING
RESPONSE TIME TO MOTIONS PERTAINING TO
DISCOVERY, AND CONTAINING ADVISEMENTS**

Mailed Date: April 4, 2014

I. STATEMENT

1. On March 1, 2014, the Commission sent, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint No. 108832 (the CPAN) to All Access Transportation, Inc. (All Access or Respondent). The CPAN commenced this Proceeding.

2. On March 18, 2014, Respondent requested an evidentiary hearing. By doing so, Respondent entered a general appearance in this Proceeding.

3. On March 21, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in this Proceeding. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this Proceeding. On March 25, 2014, co-counsel for Staff entered her appearance in this Proceeding.

4. Staff and Respondent, collectively, are the Parties.

5. On March 26, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

A. Respondent to Retain Legal Counsel or to Make Show Cause Filing.

6. Rule 4 CCR 723-1-1201(a) requires a party in an adjudication before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has held that, unless it is established that an exception applies, a party must be represented by legal counsel in an adjudication. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by an individual who is not an attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in a prehearing conference, in an evidentiary hearing, and in oral argument.

7. This is an adjudication before the Commission.

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

8. Respondent is a corporation, is a party in this matter, and is not represented by an attorney in this Proceeding.

9. If Respondent wishes to be represented in this matter by an individual who is not an attorney, then Respondent must prove that it meets the requirements to proceed in this case without an attorney. To prove that it may proceed without an attorney, Respondent must do the following: **First**, Respondent must prove that it is a closely-held entity, which means that it has no more than three owners. Section 13-1-127(1)(a), C.R.S. **Second**, Respondent must prove that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer² may represent a closely-held entity before the Commission *only* if both of the following conditions are met: (a) the amount in controversy does not exceed \$ 15,000; and (b) the officer provides the Commission with evidence, satisfactory to the Commission, of the officer's authority to represent the closely-held entity.³

10. **By this Interim Decision, the ALJ will order Respondent to choose one of these options: either retain a lawyer to represent it in this Proceeding⁴ or show cause why Rule 4 CCR 723-1-1201 does not require it to be represented in this Proceeding by a lawyer.**

11. *If Respondent chooses to retain an attorney to represent it in this matter*, then its attorney must enter an appearance in this Proceeding no later than **April 11, 2014**.

12. *If Respondent chooses to show cause*, then, no later than **April 11, 2014**, Respondent must show cause why Rule 4 CCR 723-1-1201 does not require it to be represented

² Section 13-1-127(1)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

³ As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

⁴ The lawyer must be an attorney at law currently in good standing before the Colorado Supreme Court.

by an attorney in this matter. To show cause, Respondent must file a verified statement: (a) that establishes that Respondent is a closely-held entity as defined above; (b) that establishes that the amount in controversy in this matter does not exceed \$ 15,000;⁵ (c) that identifies the individual who will represent Respondent in this matter; (d) that establishes that the identified individual is an officer of Respondent; and (e) that, if the identified individual is not an officer of Respondent, has appended to it a resolution from Respondent's Board of Directors that specifically authorizes the identified individual to represent Respondent in this matter.

13. **All Access is advised, and is on notice, that if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires All Access to retain legal counsel to represent it in this Proceeding.**

14. **All Access is advised, and is on notice, that if the ALJ issues a subsequent Decision that requires All Access to retain legal counsel, then All Access will not be permitted to participate in this matter without an attorney.** This means, among other things, that All Access will not be able to participate in the evidentiary hearing in this matter.

15. **All Access is advised, and is on notice, that if the ALJ issues a subsequent Interim Decision that permits All Access to proceed without an attorney (that is, *pro se*) in this matter, then All Access's non-attorney representative will be bound by, and will be held to, the same procedural and evidentiary rules as those to which attorneys are held.**

The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A *pro se* defendant cannot legitimately expect the

⁵ In this Proceeding, the amount in controversy is \$ 6,600, which is the maximum assessment sought in the CPAN.

court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard applies in civil proceedings. *Cornelius v. River Ridge Ranch Landowners Association*, 202 P.3d 564 (Colo. 2009); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) (“If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant.”). This standard also applies in Commission proceedings.

B. Hearing Date and Procedural Schedule.

16. On March 28, 2014, the Commission issued its Order Setting Hearing and Notice of Hearing. The evidentiary hearing in this matter is scheduled for **May 7, 2014**.

17. To accommodate this hearing date, the ALJ will order the following procedural schedule: (a) not later than **April 16, 2014**, Staff will file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case; (b) not later than **April 23, 2014**, Respondent will file its list of witnesses and complete copies of the exhibits that it will offer in its case; and (c) not later than **noon on May 2, 2014**, the Parties will file any settlement agreement or stipulation that they have reached.

18. Each witness who will be called to testify (except a witness called in Staff’s rebuttal case) must be identified on the list of witnesses that ¶ 17 requires each party to file. The list of witnesses must contain the following information for each listed witness: (a) the name of the witness; (b) the address of the witness; (c) the business telephone number or

daytime telephone number of the witness; and (d) a detailed summary of the testimony that the witness is expected to give.

19. **The Parties are advised, and are on notice, that** no person -- *including Mr. Timothy Gardner* -- will be permitted to testify on behalf of a party (except in Staff's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with ¶¶ 17 and 18 of this Interim Decision.

20. Complete copies of all exhibits (except an exhibit offered in Staff's rebuttal case or used in cross-examination) must be filed as required by ¶ 17.

21. **The Parties are advised, and are on notice, that** no document -- *including the CPAN* -- will be admitted into evidence (except in Staff's rebuttal case or when used in cross-examination) unless that document is filed in accordance with ¶¶ 17 and 20 of this Interim Decision.

22. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential.

23. Except as modified by this Interim Decision, Rule 4 CCR 723-1-1405 will govern discovery in this Proceeding.

24. Responses to discovery requests will be served within *three business days from the date of service of the requests*.⁶ Discovery served after 12:00 p.m. (*i.e.*, noon) Mountain Time on Friday will be deemed served on the next business day.

25. Motions pertaining to discovery may be filed at any time.⁷ Unless otherwise ordered, responses to motions pertaining to discovery will be written and will be filed within

⁶ By this Interim Decision, the ALJ will shorten response time to discovery.

⁷ The prefiling procedures contained in Rule 4 CCR 723-1-1405 apply.

*three business days of service of the motion.*⁸ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

26. **The Parties are advised, and are on notice, that** it is the responsibility of each party to have, at the evidentiary hearing, a sufficient number of copies of each document that it wishes to offer as an exhibit.⁹ **The Parties are advised, and are on notice, that** the fact that exhibits are prefiled in accordance with this Interim Decision does *not* alter the requirement set out in this paragraph.

27. **The Parties are advised, and are on notice, that the Commission will *not* make copies of documents that are offered as exhibits.**

C. Other Matters and Advisements.

28. **The Parties are advised, and are on notice, that** the ALJ requires each party to be familiar with, to comply with, and to abide by the Rules of Practice and Procedure, 4 CCR 723 Part 1 All Commission rules are available on-line at www.dora.colorado.gov/puc.

29. **The Parties are advised, and are on notice, that** the date of filing with the Commission is the date on which the Commission *receives* a document. Thus, for example, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed timely with the Commission.

30. **The Parties are advised, and are on notice, that** the Commission has an E-Filings System available. One may learn about, and -- if one wishes to do so -- may register to use, the E-Filings System at www.dora.colorado.gov/puc.

⁸ By this Interim Decision, the ALJ will shorten response time to motions pertaining to discovery.

⁹ This means that, at the hearing, a party must have at least four copies of each document: one to be marked and retained by the Commission as the hearing exhibit; one to be given to the opposing party; one to be given to the ALJ; and one to be retained by the party offering the exhibit.

II. ORDER

A. It Is Ordered That:

1. All Access Transportation, Inc., shall make the following choice: either retain an attorney to represent it in this matter or show cause why it is not required to be represented by an attorney in this matter.

2. If All Access Transportation, Inc., chooses to retain an attorney, the attorney for All Access Transportation, Inc., shall enter an appearance in this Proceeding not later than April 11, 2014.

3. If All Access Transportation, Inc., chooses to show cause, then All Access Transportation, Inc., shall make, not later than April 11, 2014, a filing to show cause why it is not required to be represented by an attorney in this matter. The show cause filing shall meet the requirements set out in ¶ 12, above.

4. The following procedural schedule is adopted: (a) not later than April 16, 2014, Staff of the Commission (Staff) shall file its list of witnesses in its direct case and complete copies of the exhibits that it will offer in its direct case; (b) not later than April 23, 2014, All Access Transportation, Inc., shall file its list of witnesses and complete copies of the exhibits that it will offer in its case; and (c) not later than noon on May 2, 2014, the Parties shall file any settlement agreement or stipulation that they have reached.

5. No person shall testify on behalf of a party (except in Staff's rebuttal case) unless the person is identified on the list of witnesses filed in accordance with this Interim Decision.

6. No document shall be admitted into evidence (except in Staff's rebuttal case or when used in cross-examination) unless that document is filed in accordance with this Interim Decision.

7. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery.

8. Response time to discovery is shortened to three business days from the date of service of the discovery. Discovery served after 12:00 p.m. (*i.e.*, noon) Mountain Time on a Friday is deemed served on the next business day.

9. Response time to a discovery-related motion is shortened to three business days from the date of service of the motion.

10. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 shall govern the treatment of information claimed to be confidential.

11. The Parties are held to the advisements in this Interim Decision.

12. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge