Decision No. R14-0678-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0552TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

WILLIAM WEIHROUCH, DOING BUSINESS AS DENVERPARKING.COM,

RESPONDENT.

INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE MANA L. JENNINGS-FADER PERMITTING RESPONDENT TO APPEAR WITHOUT LEGAL COUNSEL, REQUIRING STAFF TO MAKE FILING, AND CONTAINING ADVISEMENTS

Mailed Date: June 23, 2014

I. STATEMENT

1. On May 27, 2014, the Commission appears to have served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint No. 108765 (the CPAN) on William Weihrouch. The CPAN commenced this Proceeding.

2. The CPAN states that Mr. Weihrouch, doing business as denverparking.com, holds PUC Authority No. T-03312. The CPAN names Mr. Weihrouch, doing business as denverparking.com (Weihrouch or Respondent), as the Respondent.

3. On June 18, 2014, counsel for Trial Staff of the Commission (Staff) entered their 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.

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

5. On June 18, 2014, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

A. Applicant to Appear without Legal Counsel.

6. Rule 4 CCR 723-1-1201(a) requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(I) and as relevant here, an individual who is not an attorney may appear to represent her or his own interests.

7. This is an adjudication before the Commission.

8. Respondent is an individual who apparently does business under the trade name denverparking.com. Respondent is a party in this matter. As of the date of this Interim Decision, Respondent is not represented by an attorney in this Proceeding.

9. Based on the record in this matter, the ALJ finds that, as an individual, Respondent may appear without an attorney provided he represents only his own interests in this Proceeding. If he elects to do so, Respondent may retain legal counsel for this Proceeding.

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

10. **Mr. Weihrouch is advised, and is on notice, that he is the only individual who is not an attorney who is authorized to appear on behalf of Mr. Weihrouch in this Proceeding.**

11. **Mr. William Weihrouch is advised and is on notice that he will be bound by, and the ALJ will hold him to, the same procedural and evidentiary rules as those that bind attorneys**. 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 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 also applies in civil proceedings. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *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 applies in Commission proceedings.

B. Filing Regarding Potential Hearing Dates.

12. The CPAN stated that, if he chose to do so, Respondent could pay one-half of the maximum assessment set out in the CPAN within ten days from the date of service. If made, the payment would constitute an admission of liability and would resolve this matter.

13. Review of the Commission file in this Proceeding reveals that Respondent did not make the payment. As a consequence of Respondent's election not to pay, the CPAN is contested. The ALJ must schedule the evidentiary hearing in this Proceeding.

14. By this Interim Decision, the ALJ will order Staff to contact Respondent in order to discuss dates for the evidentiary hearing in this matter. By this Interim Decision, the ALJ will order Staff to file, not later than **July 11, 2014**, a list of three proposed hearing dates, each of which is agreeable to the Parties. If possible, the ALJ will select one of the proposed dates. By this Interim Decision, the ALJ will order Respondent to cooperate with Staff with respect to the required filing.

15. **The Parties are advised, and are on notice, that** if Staff fails to make the required filing (that is, proposed hearing dates to which both Parties agree), the ALJ will select the evidentiary hearing date without input from the Parties.

16. **The Parties are advised, and are on notice, that** the testimony in this Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness (except a witness offered in Staff's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information must be provided in the list of witnesses to be filed in accordance with the procedural schedule that the ALJ will establish in a future Interim Decision.

17. **The Parties are advised, and are on notice, that** no person will be permitted to testify (except in Staff's rebuttal case) unless that person is identified in the list of witnesses.

18. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Staff's rebuttal case or an exhibit to be used in cross-examination) must be filed in advance of the hearing and in accordance with the procedural schedule that the ALJ will establish in a future Interim Decision.

19. **The Parties are advised, and are on notice, that** no document will be admitted as an exhibit (except in Staff's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

C. Other Matters and Advisements.

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

21. **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.

22. **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.

II. ORDER

A. It Is Ordered That:

1. Respondent William Weihrouch, doing business as denverparking.com, may appear in this Proceeding without legal counsel for the purpose ofrepresenting his own interests.

2. Not later than July 11, 2014, Staff of the Commission shall make a filing regarding proposed evidentiary hearing dates. The filing shall comply with ¶ 14, above.

3. Respondent William Weihrouch, doing business as denverparking.com, shall cooperate with Staff of the Commission with respect to the filing required by Ordering Paragraph No. 2.

4. If Staff of the Commission does not make the filing required by Ordering Paragraph No. 2, the Administrative Law Judge will schedule the evidentiary hearing in this Proceeding without input from the Parties.

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

6. This Interim Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director