

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0537CP

IN THE MATTER OF THE APPLICATION OF A TASTE OF CRAFT INC., FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
PERMITTING APPLICANT TO
PROCEED WITHOUT LEGAL COUNSEL;
ACCEPTING AMENDMENT; AND
SETTING PREHEARING CONFERENCE**

Mailed Date: July 16, 2014

TABLE OF CONTENTS

I.	<u>STATEMENT</u>	1
	A. Application Deemed Complete and Time for Commission Decision.	2
	B. Legal Counsel/Self Representation	3
	C. Amendment Filed on June 27, 2014.....	5
	D. Prehearing Conference	6
II.	ORDER.....	6
	A. It Is Ordered That:	6

I. STATEMENT

1. On May 27, 2014, A Taste of Craft Inc. (Craft or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this proceeding.

2. On May 29, 2014, Craft filed amendments to the Application.

3. On May 29, 2014, the Commission issued its Notice of Application Filed (Notice)

in this proceeding by publishing a summary of the same in its Notice as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle service and call-and demand-charter service

between all points in the Counties of Boulder and Broomfield, The Town of Erie and the Cities of Arvada and Golden, State of Colorado.

4. On June 5, 2014, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi (Metro Taxi) filed their Entry of Appearance and Notice of Intervention of Right through counsel. This filing attached Commission Authority No. 1481 held by Metro Taxi and a preliminary list of witnesses and exhibits.

5. On June 27, 2014, Craft filed an amendment to the Application restricting the number of vehicles in operation at any one time to two.

6. On June 30, 2014, Metro Taxi filed its Withdrawal of Intervention.

7. On July 2, 2014, Colorado Cab Company LLC (Colorado Cab), doing business as, Denver Yellow Cab and Boulder Yellow Cab, timely intervened of right through counsel. This filing attached Commission Authority No. 2378 and No. 150 held by Colorado Cab.

8. On July 9, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ)

A. Application Deemed Complete and Time for Commission Decision.

9. On July 9, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Craft provided neither its supporting

testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

10. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission¹ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue on or before 210 days from the date on which the Commission deemed the Application to be complete.

B. Legal Counsel/Self Representation

11. *Rule 1201(a) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations* (CCR) 723-1, requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to *Rule 1201(b)*, 4 CCR 723-1, and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity, provided the Commission grants permission.

12. Applicant is a Colorado corporation, is a party in this matter, and is not represented by an attorney in this proceeding.

13. The ALJ notes that the application of Craft was executed by Scott Thompson who wishes to represent the Applicant. The application does not identify Mr. Thompson as an attorney. In order to be represented in this matter by an individual who is not an attorney, Applicant must establish that: (a) it is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S.; (b) the amount in controversy does not exceed \$ 15,000; and (c) the individual who will represent Applicant has authority to represent Applicant

¹ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

14. In the Application, Mr. Thompson attests that he is an owner of Craft, there are three or fewer owners of Craft and that the amount in controversy does not exceed \$15,000.

15. Review of the information provided by Mr. Thompson and the information provided in the Application establishes that Craft is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., the amount in controversy is less than \$15,000 and Mr. Thompson has authority to represent the Applicant.

16. Having met the requirements of *Rule 1201(b)*, 4 CCR 723-1, Mr. Thompson shall be allowed to represent Craft.

17. Applicant is advised, and is on notice, that Mr. Thompson is the only non-attorney who is authorized to be Craft's representative in this proceeding.

18. Mr. Thompson is advised, and is on notice, that he shall be bound by the same procedural and evidentiary rules as 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 applies as well to civil proceedings.

Negron v. Golder, 111 P.3d 538, 541 (Colo. App. 2004).

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."

Loomis v. Seely, 677 P.2d 400, 402 (Colo. App. 1983).

A judge may not become a surrogate attorney for a *pro se* litigant.

Id.

C. Amendment Filed on June 27, 2014

19. On June 27, 2014, Craft filed an amendment to the Application restricting the total number of vehicles in use at any one time to two. The amendment was filed after the Application was noticed. The amended Application, reads as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers

in call-and-demand shuttle service and call-and-demand charter service between all points in the Counties of Boulder and Broomfield, the town of Erie and the Cities of Arvada and Golden, State of Colorado.

RESTRICTIONS:

A Taste of Craft can own more than two vehicles in their fleet, but is limited to only two vehicles operating for business at any time.

20. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority. The proposed amendment to the Application meets these standards.

21. The ALJ finds and concludes that the proposed amendment is restrictive in nature, is clear and understandable, and is administratively enforceable.

22. The restriction to the authority sought by Applicant (*i.e.*, the amendment to the Application) will be accepted

D. Prehearing Conference

23. Given the procedural posture of the case, it is appropriate to hold a prehearing conference to address several issues. The parties to this proceeding should be prepared to discuss all procedural and substantive issues, including, but not limited to, deadlines for witness lists, exhibits, and a date for a hearing on the Application.

24. A pre-hearing conference in this matter will be scheduled as ordered.

II. ORDER**A. It Is Ordered That:**

1. A prehearing conference is scheduled in this matter as follows:

DATE: July 31, 2014
TIME: 10:00 a.m.
PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. A Taste of Craft Inc., is authorized to proceed with Mr. Scott Thompson as its non-attorney representative in this matter. Mr. Scott Thompson is the only non-attorney who is authorized to represent A Taste of Craft Inc., in this Proceeding.

3. The amendment to the Application filed on June 27, 2014, by A Taste of Craft Inc., is accepted.

4. The Parties shall be held to the advisements in this Decision.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director