

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1008CP

IN THE MATTER OF THE APPLICATION OF NASH PILLSBURY DOING BUSINESS AS
RIDE TAXI TO OPERATE AS A COMMON CARRIER OF PASSENGERS BY MOTOR
VEHICLE FOR HIRE.

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

Mailed Date: December 12, 2014

TABLE OF CONTENTS

I.	<u>STATEMENT</u>	1
	A. Application Deemed Complete and Time for Commission Decision.	3
	B. Proceeding Caption	3
	C. Legal Counsel/Self Representation	4
	D. Legal Representation of Fresh Tracks Transportation, LLC.....	5
	E. Prehearing Conference	7
II.	ORDER.....	7
	A. It Is Ordered That:	7

I. STATEMENT

1. On October 7, 2014, Nash Pillsbury, doing business as Ride Taxi (Ride Taxi 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 October 20, 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

between all points within a 30-mile radius of the intersection of Hurd Lane and Avon Road, Avon, Colorado, and from said points, on the one hand, to all points in the state of Colorado, on the other hand.

3. On October 24, 2014, Ride Taxi filed an amendment to the application, as amended the authority will read:

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

passengers in call and demand taxi service

Originating within a 30 mile radius from the intersection of Hurd Ln. and Avon Rd., Avon, CO; service terminating at all points in Colorado

4. On October 24, 2014, Hy-Mountain Transportation, Inc. doing business as Hy-Mountain Taxi (Hy-Mountain) filed its Entry of Appearance and Notice of Intervention through counsel. This filing attached Commission Authority No. 14114 held by Hy-Mountain.

5. On October 29, 2014, Fresh Tracks Transportation, LLC (Fresh Tracks), filed its Entry of Appearance and Notice of Intervention. The Fresh Tracks filing identified Commission Authority No. 55753 as the basis of its intervention, and included a copy of the same. In addition, the Fresh Tracks filing included a preliminary disclosure of witnesses and exhibits it intends to present at the hearing in this matter.

6. On November 12, 2014, Rainbows, Inc., doing business as 453-Taxi (453-Taxi) filed an Entry of Appearance and Notice of Intervention and Protest as a matter of Right through counsel. The 453-Taxi filing identified Commission Authority No. 54842 as the basis of its intervention and included a copy of the same.

7. On December 3, 2014, the Commission deemed the application complete and referred it to an Administrative Law Judge (ALJ) for disposition.

A. Application Deemed Complete and Time for Commission Decision.

8. On December 3, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When Applicant filed the Application, it 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.

9. 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. Proceeding Caption

10. The caption that was assigned for this proceeding was incomplete and did not contain the full name of the Applicant.

11. The undersigned ALJ shall *sua sponte* amend the caption so it contains the full name of the 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.

C. Legal Counsel/Self Representation

12. *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)(I)*, 4 CCR 723-1, and as relevant here, an individual who is not an attorney may appear to represent his or her own interests.

13. The ALJ notes that the application and an Affidavit of Eligibility were executed by Nash Pillsbury who wishes to represent his own interest in the above captioned proceeding.

14. Review of the information provided by Mr. Pillsbury in the Application establishes that Mr. Pillsbury may represent his own interests.

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

16. Applicant is advised, and is on notice, that Mr. Pillsbury is the only non-attorney who is authorized to be Nash Pillsbury, doing business as Ride Taxi's representative in this proceeding.

17. Mr. Pillsbury 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.

D. Legal Representation of Fresh Tracks Transportation, LLC

18. The undersigned ALJ notes that the intervention of Fresh Tracks was executed by Mr. Peter Griff. The Intervention does not state that Mr. Griff is an attorney at law currently in good standing before the Supreme Court of the State of Colorado. Currently, it is unknown who intends to represent the interests of the Fresh Tracks.

19. Fresh Tracks is not an individual and has not entered an appearance through counsel, it is appropriate to provide Fresh Tracks with advisements concerning certain Commission rules regarding legal representation. Fresh Tracks is advised that *Rule 1201(b) of 4 (CCR) 723- 1*, requires a party in an adjudicatory proceeding before the Commission to be represented by an attorney *unless* the party is an individual appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a closely-held entity pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004 and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

20. Since Fresh Tracks is not an individual, if it wishes to proceed in this matter without an attorney, it must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See, Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127(1)(a), C.R.S.*

It must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer² may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.³

21. Fresh Tracks shall be ordered either to obtain counsel or to show cause why *Rule 1201* 4 CCR 723-1 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

22. If Fresh Tracks elects to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on January 5, 2015.

23. If Fresh Tracks elects to show cause, then, on or before close of business on, January 5, 2015, it must show cause why *Rule 1201*, 4 CCR 723-1 does not require it to be represented by legal counsel in this matter. To show cause, each party must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed \$15,000 (including a statement explaining the basis for that assertion); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, has appended to it a resolution from the party's Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

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 a person in whom management of a limited liability company is vested or reserved "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[.]"

24. Fresh Tracks is advised, and is on notice, that if it fails either to show cause or to have legal counsel file an entry of appearance on or before close of business on January 5, 2015, then the ALJ may dismiss the Intervention.

25. If the ALJ permits a party to proceed *pro se* (that is, without an attorney) in this matter, that party is advised, and is on notice, that its representative will be bound by the same procedural and evidentiary rules as attorneys.

E. Prehearing Conference

26. Given the procedural posture of the case at this point, 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 deadlines for witness lists, exhibits and supplements to witness lists and exhibits, any amendments to the Application, and a date for a hearing on the Application.

27. All parties are expected to appear at the hearing. However, any party may appear by telephone by calling (303) 869-0599 a few minutes prior to the scheduled start of the hearing.

28. A prehearing conference in this matter will be scheduled as ordered below.

II. ORDER

A. It Is Ordered That:

1. Commission administrative personnel shall amend the Commission's records to reflect that the caption for Proceeding No. 14A-1008CP is changed as set out above in this Decision.

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

DATE: January 22, 2015

TIME: 9:00 a.m.

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

3. All Parties are required to appear for the prehearing conference, but may appear by phone by calling (303) 869-0599 a few minutes before 9:00 a.m.

4. Nash Pillsbury, doing business as Ride Taxi, is authorized to proceed with Nash Pillsbury as its non-attorney representative in this matter. Mr. Nash Pillsbury is the only non-attorney who is authorized to represent Nash Pillsbury, doing business as Ride Taxi in this Proceeding.

5. Intervenor, Fresh Tracks, LLC shall make the filing concerning legal representation described in ¶ 23 above on or before January 5, 2015.

6. Alternatively, in the event, Fresh Tracks LLC, elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before January 5, 2015

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

8. 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