

Decision No. R14-0569-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14M-0410TR

IN THE MATTER OF THE PETITION OF RONALD FLEMING TO REVERSE AN
INITIAL DRIVER DISQUALIFICATION DETERMINATION PURSUANT TO
RULE 6105 OF 4 CODE OF COLORADO REGULATIONS 723-6.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
REQUIRING FILINGS AND
CONTAINING ADVISEMENTS**

Mailed Date: May 28, 2014

I. STATEMENT

1. On May 2, 2014, Mr. Ronald Fleming (Petitioner or Mr. Fleming) submitted a letter to the Commission. In that letter, Mr. Fleming requested that the Commission reverse the Staff of the Commission's (Staff) initial determination, based on the results of a fingerprint-based criminal history background check, that disqualifies Mr. Fleming as a driver for exempt passenger carriers and/or taxi carriers.

2. The Commission determined that the letter is a petition to reverse Staff's initial disqualification determination. On May 7, 2014, by Minute Order, the Commission opened this Proceeding.

3. On May 7, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. On May 21, 2014, counsel for testimonial (litigation) Staff entered their appearances in this matter. In that filing and pursuant to Rule 4 *Code of Colorado Regulations*

(CCR) 723-1-1007(a),¹ Staff counsel identified the testimonial (litigation) Staff and the advisory Staff in this Proceeding.

5. Mr. Fleming and Staff, collectively, are the Parties.

6. Pursuant to Rule 4 CCR 723-6-6105(I),² the following applies in this case: (a) Staff is an indispensable party and has the burden of going forward to demonstrate the basis or bases for its initial disqualification determination;³ (b) after Staff has presented its case, Petitioner presents his case;⁴ (c) if Staff's initial disqualification of Mr. Fleming was based on Rule 4 CCR 723-6-6105(f)(II), Mr. Fleming has "the burden of proving that he is of good moral character based upon all surrounding facts and circumstances or that disqualification is not supported by fact or by law" (Rule 4 CCR 723-6-6105(I)(I)(A)); (d) if Staff's initial disqualification of Mr. Fleming was based on Rule 4 CCR 723-6-6105(f)(III), Mr. Fleming has the "burden of proving that disqualification is not supported by fact or by law" (Rule 4 CCR 723-6-6105(I)(I)(B)); (e) if Staff's initial disqualification of Mr. Fleming was based on Rule 4 CCR 723-6-6105(h), Staff has "the burden of proving all applicable elements" (Rule 4 CCR 723-6-6105(I)(I)(C)); and (f) if Staff based the initial disqualification on a determination of moral character, the Commission uses the standards established in § 24-5-101(2), C.R.S., to make its decision on the petition.

7. The ALJ will order Staff to file, not later than **June 13, 2014**, a statement that specifies each basis for the initial disqualification determination made with respect to

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

² This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

³ This means that Staff presents its case first. Presentation of Staff's case may include witnesses or documents or both.

⁴ This means that Petitioner presents his case second. Presentation of Petitioner's case may include witnesses or documents or both.

Mr. Fleming. The filing must include the documents on which Staff relied when it made its initial disqualification determination.

8. **The Parties are advised, and are on notice, that** each must redact confidential or personal information (for example, Respondent's Social Security number, date of birth, home address, telephone number, and driver's license number) from documents filed in the public record. If confidential or personal information is redacted from a document, the filing party must file under seal the complete document with the confidential or personal information clearly marked or identified. *See generally* Rules 4 CCR 723-1-1100 and 4 CCR 723-1-1101 (governing treatment of information claimed to be confidential in litigated matters).

9. It is necessary to schedule an evidentiary hearing in this Proceeding. To schedule the hearing date, the ALJ will order Staff: (a) to contact Petitioner to discuss possible hearing dates; and (b) to file, not later than **June 13, 2014**, three proposed hearing dates on which the Parties and their witnesses are available in August 2014.⁵ The ALJ will choose, if possible, one of the suggested dates.

10. **The Parties are advised, and are on notice, that** failure to make a filing containing proposed hearing dates will result in the ALJ's selecting a hearing date without input from the Parties. In that event, the ALJ will not reschedule the hearing date without a showing of good cause.

11. After selecting the date for the hearing, the ALJ will issue an Interim Decision scheduling the evidentiary hearing and establishing the procedural schedule.

⁵ The ALJ is *not* available on these dates: August 6 and 27, 2014.

12. 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)(I), an individual who is not an attorney may represent her or his own interests. Thus, in this Proceeding, Mr. Fleming may appear without an attorney (that is, he may appear *pro se*).

13. **Mr. Fleming is advised, and is on notice, that** he is the only non-attorney who is authorized to appear on his behalf in this Proceeding. In addition, **Mr. Fleming 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 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 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 also 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 cases.

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

15. **The Parties are advised, and are on notice, that** a document is filed with the Commission when the Commission *receives* the document. Thus, if a document is placed in the mail on the date on which the document is to be filed, the document is *not* filed with the Commission in a timely manner.

16. **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 -- that system at www.dora.colorado.gov/puc.

II. **ORDER**

A. **It Is Ordered That:**

1. Not later than June 13, 2014, Staff of the Commission shall file a statement that specifies each basis for the initial disqualification determination made with respect to Mr. Ronald Fleming. The filing shall meet the requirements of ¶ I.7, above.

2. Not later than June 13, 2014, and following consultation with Mr. Ronald Fleming, Staff of the Commission shall file a list of three proposed evidentiary hearing dates in August 2014 on which the parties and their witnesses are available.

3. If Staff of the Commission does not make the filing required by Ordering Paragraph No. 2, then the Administrative Law Judge shall select the hearing date without input from the Parties. If the Administrative Law Judge selects the hearing date pursuant to this Ordering Paragraph, the Administrative Law Judge will not reschedule the hearing date without a showing of good cause.

4. Each party is held to the advisements contained in this Interim Decision.

5. 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

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

Doug Dean,
Director