

Decision No. R14-0728-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0495BP

IN THE MATTER OF THE APPLICATION OF DIVINE ROYAL CARE FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

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

Mailed Date: June 27, 2014

I. STATEMENT

1. On May 16, 2014, Divine Royal Care LLC (Divine Royal or Applicant), filed an Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this proceeding.

2. On May 19, 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 contract carrier by motor vehicle for hire for the transportation of

passengers

between all points in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This application is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid; and
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado.

3. 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.

4. On June 18, 2014, Colorado Cab Company LLC (Colorado Cab), doing business as, Denver Yellow Cab and Colorado Springs Transportation LLC (Springs), timely intervened of right through counsel. This filing attached Commission Authority No. 2378 held by Colorado Cab and Commission Authority No. 109 held by Springs.

5. On June 25, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ)

A. Application Deemed Complete and Time for Commission Decision.

6. On June 25, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Divine Royal 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.

7. 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.

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.

B. Legal Counsel/Self Representation

8. 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.

9. Applicant is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this proceeding.

10. The ALJ notes that the application of Divine Royal was executed by Victor O. Wagidi who wishes to represent the Applicant. The application does not identify Mr. Wagidi 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

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

12. Review of the information provided by Mr. Wagidi and the information provided in the Application establishes that Divine Royal 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. Wagidi has authority to represent the Applicant.

13. Having met the requirements of Rule 1201(b), 4 CCR 723-1, Mr. Wagidi shall be allowed to represent Divine Royal.

14. Applicant is advised, and is on notice, that Mr. Wagidi is the only non-attorney who is authorized to be Divine Royal's representative in this proceeding.

15. Mr. Wagidi 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. Prehearing Conference

16. 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.

17. 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 10, 2014
TIME: 9:00 a.m.
PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

2. Divine Royal Care LLC, is authorized to proceed with Mr. Victor O. Wagidi as its non-attorney representative in this matter. Mr. Victor O. Wagidi is the only non-attorney who is authorized to represent Divine Royal Care LLC in this Proceeding.

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

4. 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