

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0759CP

IN THE MATTER OF THE APPLICATION OF MANITOU SPRINGS ADVENTURES, LLC
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; REQUIRING
INTERVENOR TO MAKE FILING REGARDING
LEGAL COUNSEL OR TO SHOW CAUSE
WHY LEGAL COUNSEL IS NOT REQUIRED; AND
SETTING PREHEARING CONFERENCE**

Mailed Date: August 29, 2014

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I. STATEMENT

1. On July 11, 2014, Manitou Springs Adventures, LLC (Manitou Springs 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 July 14, 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 sightseeing service

between all points in the Counties of El Paso, Park and Teller, State of Colorado.

RESTRICTION:

(A) This Application is restricted against transportation services to or from airports.

3. On July 18, 2014, Marketing Services Inc. of Pueblo/Adventures Out West Inc. (Marketing Services or Intervenor) filed their Entry of Appearance and Notice of Intervention. This filing attached Commission Authority No. 55737 held by Marketing Services.

4. On August 20, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

A. Application Deemed Complete and Time for Commission Decision.

5. On August 20, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Manitou Springs 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.

6. 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

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.

Application should issue on or before 210 days from the date on which the Commission deemed the Application to be complete.

B. Applicant Legal Counsel/Self Representation

7. *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.

8. Applicant is a limited liability corporation and is a party in this matter. The Applicant is not represented by an attorney in this proceeding.

9. The ALJ notes that the Application of Manitou Springs was executed by Steven Pearson who wishes to represent the Applicant. The Application does not identify Mr. Pearson 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.

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

11. Review of the information provided by Mr. Pearson and the information provided in the Application establishes that Manitou Springs 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. Pearson has authority to represent the Applicant.

12. Having met the requirements of *Rule 1201(b)*, 4 CCR 723-1, Mr. Pearson shall be allowed to represent Manitou Springs.

13. Applicant is advised, and is on notice, that Mr. Pearson is the only non-attorney who is authorized to be Manitou Springs' representative in this proceeding.

14. Mr. Pearson 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. Intervenor Legal Counsel/Self Representation

15. *Rule 4 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.

16. Intervenor is a Colorado corporation and is a party in this matter. The Intervenor is not represented by an attorney in this proceeding.

17. The ALJ notes that the Entry of Appearance and Notice of Intervention was executed by Greg Wellens and states that he is an owner of Marketing Services. Mr. Wellens is not identified as an attorney.

18. In light of the fact that the Intervenor is not individual and counsel has not entered an appearance, it is appropriate to provide the Intervenor with advisements concerning certain Commission rules regarding legal representation. To that end, the Intervenor is advised that 4 CCR 723-1-1201(a) *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.

19. Since the Intervenor 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*, 4 CCR 723-1-1201(b)(II) 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

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.

\$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

20. The Intervenor shall be ordered either to obtain counsel or to show cause why Rule 4 CCR 723-1-1201 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.

21. If the Intervenor elects to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on September 12, 2014.

22. If the Intervenor elects to show cause, then, on or before close of business on, September 12, 2014, it must show cause why Rule 4 CCR 723-1-1201 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.

23. The Intervenor is advised, and is on notice, that if it fails either to show cause or to have its legal counsel file an entry of appearance on or before close of business on September 12, 2014, then the ALJ may order the party to obtain counsel, or may dismiss the Intervention. The Intervenor is advised, and is on notice that, if the ALJ issues a decision

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[.]"

requiring it to obtain legal counsel, they will not be permitted to proceed in this matter without counsel.

24. 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.

D. Prehearing Conference

25. 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.

26. 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: September 18, 2014

TIME: 9:00 a.m.

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

2. Manitou Springs Adventures, LLC, is authorized to proceed with Mr. Steven Pearson as its non-attorney representative in this matter. Mr. Steven Pearson is the only non-attorney who is authorized to represent Manitou Springs Adventures, LLC in this Proceeding.

3. Marketing Services Inc. of Pueblo/Adventures Out West Inc. shall make the filing concerning legal representation described in Paragraph No. 22 above on or before September 12, 2014.

4. Alternatively, if Marketing Services Inc. of Pueblo/Adventures Out West Inc. elects to retain an attorney, such attorney shall enter an appearance in this proceeding on or before September 12, 2014.

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

6. 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