

Decision No. R14-1366-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 14F-0784TO

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CHARLES SNYDER,

COMPLAINANT,

V.

RANDY'S HIGH COUNTRY TOWING, INC.,

RESPONDENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
PAUL C. GOMEZ  
DENYING REQUEST FOR REASSIGNMENT  
OF JUDICIAL OFFICER AND REQUIRING  
FILING FROM COMPLAINANT REGARDING  
INTENT TO PROSECUTE COMPLAINT**

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Mailed Date: November 13, 2014

**I. STATEMENT**

1. The captioned proceeding was initiated on July 16, 2014, when Charles Snyder (Complainant) filed a Formal Complaint (Complaint) against Randy's High Country Towing, Inc. (Respondent).

2. On July 23, 2014, the Public Utilities Commission (Commission) issued an order to Respondent to answer or satisfy the Complaint. At the same time, the Commission scheduled the matter for an evidentiary hearing for October 1, 2014 at 8:00 a.m. The proceeding was assigned to the undersigned Administrative Law Judge (ALJ).

3. Respondent failed to respond to the Order to Satisfy or Answer within the required 20-day period. As a result, on September 15, 2014, Interim Decision No. R14-1124-I was issued which required Respondent to file an Answer to the Complaint. That Interim Decision also vacated the October 1, 2014 hearing date.

4. On September 17, 2014, Respondent filed its Answer to the Complaint.

5. By Interim Decision No. R14-1192-I, issued September 30, 2014, an evidentiary hearing was scheduled for November 10, 2014.

6. By Interim Decision No. R14-1273-I issued October 22, 2014, Respondent's Motion for Extension of Hearing which requested a hearing date after November 16, 2014 was granted. Complainant did not file a response to the motion; therefore it was found that the motion was unopposed. The evidentiary hearing was rescheduled for November 17, 2014.

7. On November 10, 2014, Complainant filed a Request for Reassignment of Judicial Officer in this proceeding. According to the pleading, Complainant seeks to have this proceeding reassigned to ALJ Melody Mirbaba.

## **II. FINDINGS**

8. Complainant's pleading states that he seeks to have the Complaint reassigned because the undersigned ALJ has twice denied Complainant's request to appear at the evidentiary hearing by telephone. Complainant argues that the distance of the Complainant from the Commission hearing room in Denver is a legitimate reason for allowing him to appear by telephone.

9. As support for his request, Complainant cites to the local rules for civil proceedings of the United States District Court for the District of Colorado. Specifically, Complainant cites to Rule D.C.Colo. LCivR 40.1, subsections (a) and (c)(4)(A). Subsection (a)

describes how the Federal District Court conducts its civil case assignments. Subsection (c)(4)(A) sets out when a new case which is related to a pending case may be assigned to the same judicial officer. Complainant also cites to subsection (c)(1) which states that “if an unrepresented party in a new case already had a case pending or had a case terminated within 12 months of the new filing, the new case shall be assigned to the judicial officers who were assigned the earlier case.”

10. The Commission does not follow, nor is it bound by the rules of the Federal District Court for the District of Colorado. Rather, as set forth in the Colorado Administrative Procedure Act (CAPA), § 24-4-101, *et seq.*, C.R.S., administrative hearings to the extent practicable, generally follow the Colorado Rules of Civil Procedure (C.R.C.P.) and the procedure in the district courts. § 24-4-105(4), C.R.S. Additionally, “[t]he rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts.” *See*, § 24-4-105(7), C.R.S.<sup>1</sup> Further, no such provision regarding case assignments exists in the CAPA or the C.R.C.P.

11. The relief sought by Complainant is nothing more than “judge shopping” in order to receive a more favorable outcome for his motion to appear by telephone. The Colorado Supreme Court on numerous occasions has unequivocally stated that judge shopping is simply impermissible. There is no reason the undersigned ALJ would find it necessary to disqualify himself from this proceeding either pursuant to Rule 2.11 under Canon 2 of the Judicial Cannon of Ethics or Rule 4 *Code of Colorado Regulations* 723-1-1109 of the Commission’s Rules of

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<sup>1</sup> The reference to “district courts” in the statutory provisions refers to State district courts rather than Federal district courts.

Practice and Procedure. Complainant has not alleged, nor is there any indication whatsoever of any partiality or bias by the undersigned ALJ.

12. Therefore, Complainant's request for reassignment of this proceeding is denied. However, the evidentiary hearing now scheduled for November 17, 2014 will be vacated. Pending a filing from Complainant as to a date most convenient to him for an evidentiary hearing, the matter will be held in abeyance pending such a filing. The evidentiary hearing will be rescheduled based on Complainant's preferred date.

### **III. ORDER**

#### **A. It Is Ordered That:**

1. The Motion of Complainant Mr. Charles Snyder to reassign this proceeding is denied consistent with the discussion above.

2. The evidentiary hearing scheduled for November 17, 2014 is vacated

3. An evidentiary hearing in this proceeding will be scheduled at such time as Complainant files a pleading indicating his preferred hearing date.

4. This proceeding will be held in abeyance pending a filing from Complainant as described above in Ordering Paragraph No. 3.

5. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director