

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98M-75

80998

DISP TONER BY)
 In Matter of) CIB DOCKET NO. 98-44
)
 JOSEPH FRANK PTAK)
 San Marcos, Texas)
)
 Order to Show Cause Why a Cease and)
 Desist Order Should Not Be Issued)

ORDER

Issued: June 10, 1998 ; Released: June 11, 1998

On May 26, 1998, a pleading was filed that is styled Hays County Guardian's Request for Admission of Facts and Genuineness of Documents (referred to as "Request for Admission"). The pleading was signed with the signature of Joe Ptak over the typed names of "Joe Ptak, Jeffrey "Zeal" Stefanoff for the Hays County Guardian."

On June 1, 1998, the Compliance and Information Bureau ("Bureau") filed Objections to Hays County Guardian's Request for Admission of Facts and Genuineness of Documents (referred to as "Objections"). The Bureau objects to the Request for Admission because the pleading was served late and because it was sent to the Commission (i.e. filed) by or on behalf of non-parties.

Section 1.246(a) [47 C.F.R. §1.246(a)] provides that a Request for Admission must be served "within 20 days after the time for filing a notice of appearance has expired." This proceeding was instituted by Order to Show Cause and Notice of Opportunity for Hearing, FCC 98-60, released April 6, 1998 ("Show Cause Order") which provided in Para. 11 that the Notice of Appearance of Joseph Frank Ptak ("Ptak") was to be filed within 20 days of the mailing of the Show Cause Order.

On April 8, 1998, the Show Cause Order was mailed. As calculated under the Commission's Rules of Practice, on or before April 28, 1998, Ptak was required to file his Notice of Appearance. See 47 C.F.R. §1.4 (computation of time). Ptak filed an "Appearance Statement" on May 7, 1998. See Order FCC 98M-62, released May 22, 1998.¹ Thus, the deadline for serving a

¹ The Notice of Appearance was accepted because it substantially complied with the Rule. 47 C.F.R. §1.91(c). Order FCC 98M-62, released May 22, 1998. Ptak was permitted to file it nine days late. See Prehearing Conference at Tr. 9 (the Bureau would accept this filing, albeit late, as Mr. Ptak's Notice of Appearance).

Request for Admission was May 18, 1998. Id (20 days from April 28, the date the notice of appearance was to be filed. The Certificate of Service that accompanied the Request for Admission at issue here was dated May 20, 1998, which was two days past the time permitted under the Rules.²

The Request for Admission was not only late-served under the Rules. It also was filed and served by Ptak on behalf of non-parties.³ If this case were permitted to go forward willy nilly with parties added at the whim of Mr. Ptak, confusion would result to the detriment of the case and the public interest.

The Rules of Practice provide that a Request for Admission may be the subject of a properly asserted objection if the request is "improper in whole or in part." 47 C.F.R. §1.246(b)(1). The Bureau has filed timely and appropriate Objections. It is also provided under the Commission's Rules of Practice that written objections to requested admissions may be ruled upon by the Presiding Judge without additional pleadings. 47 C.F.R. §1.146(d). Therefore, the issue before the Presiding Judge is ripe for a ruling. The Bureau's Objections are correct. Ptak has failed to meet the Commission's requirements as to time for filing a Request for Admission and as to the proper parties to file pleadings in this matter.

This ruling denying Mr. Ptak's discovery via Request for Admission does not deny him the right to assert defenses and arguments based on affidavits and relevant documents filed timely in opposition to the pending Motion For Summary Decision. Correspondence passing between Mr. Ptak and Commission staff will be accepted as genuine copies unless there is an apparent discrepancy or indication of fabrication.⁴ The constitutional issues as to which Mr. Ptak seeks admissions are matters of law that are beyond the jurisdiction of this proceeding. Mr. Ptak apparently has access to a lawyer

² There has been no request and there is no cause shown for granting Mr. Ptak any extension of time in connection with this Request for Admission. A Motion To Extend All Filing Dates for 90 days was filed on May 15, 1998, by Ptak, Jeffrey "Zeal" Stefanoff and the Hays County Guardian et al. The pleading was inappropriate because it was filed by or on behalf of non parties, was overly broad and stated no cause. The Motion To Extend was opposed by the Bureau at the Prehearing Conference at which Ptak failed to appear. See Prehearing Conference at Tr. 23-25. The Motion To Extend was denied. See Order FCC 98M-62, released May 22, 1998, at 2-3.

³ See 47 C.F.R. §1.223(b). A person desiring to intervene as a party must file a petition for leave to intervene not later than 30 days after publication of the Show Cause Order. The petition must show how participation will assist the Commission in determining the issues and must be accompanied by an affidavit of relevant facts that is based on personal knowledge. Only after these conditions are met may the Presiding Judge, as a discretionary matter, grant or deny any such petition or other relief for limited participation. None of these conditions for intervention have been met or attempted to be met by the Hays County Guardian or by Jeffrey "Zeal" Stefanoff.

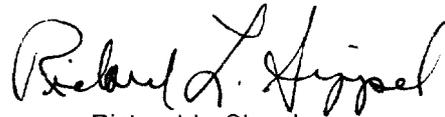
⁴ If a Ptak letter was answered by the Bureau staff, it lends credence to the genuineness of the Ptak letter.

in view of the character of his pleadings and briefs and the invitation to the Bureau to contact Patrick Wiseman, Esquire "in his capacity of legal council [sic] for the Hays County Guardian." Mr. Ptak also has been warned of the deadline for the filing of an opposition or counter motion. See Order FCC 98M-70, released June 8, 1998, at fn. 1. It is up to Mr. Ptak and any counsel assisting him to bring the appropriate pleadings and papers to the Commission on time and in proper form. There has been an important extension of time already granted to Mr. Ptak to file a late Notice of Appearance. But now that Mr. Ptak is in the case he must comply with the Rules.

Accordingly, IT IS ORDERED that the Objections of the Compliance and Information Bureau that were filed on June 1, 1998, in response to the Hays County Guardian's Request for Admission of Facts and Genuineness of Documents ARE HEREBY SUSTAINED.

IT IS FURTHER ORDERED that the pleading filed on May 26, 1998, that is styled Hays County Guardian's Request for Admission of Facts and Genuineness of Documents IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is written in a cursive, flowing style.

Richard L. Sippel

Administrative Law Judge