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AREA CODE 717
234-7051

RECEIVED
1999 DEC -3 AM 11:00
INDEPENDENT REGULATORY REVIEW COMMISSION

December 1, 1999

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Robert Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Proposed Rulemaking, 67 Pa.Code Ch. 445 and 491, *Pennsylvania Bulletin*, Vol. 49, No. 43, 10/23/99 at pp. 5515 et seq.

Dear Mr. Nyce:

I would like to take the opportunity to comment on the proposed rulemaking relative to the above as an attorney who practices before hearing officers at the Department of Transportation.

Generally speaking, the separation of the docket clerks is necessary for the efficient administration of these cases. Specifically, Hearing Officer Robert Raymond is located at the Forum Place Building whereas Hearing Officer Robert Bazdar is located at the Riverfront Office Center. It makes no sense to file administrative documents pertaining to a case before a hearing officer with the Docket Clerk across town. Accordingly, this is, in my view, a necessary step for the administration of these cases overall.

I would like to add; however, that having only one hearing officer for all the credit computation cases, §1516(d) cases, and the OLL/PL hearings, is not sufficient. The sheer volume of cases proceeding through the Administrative Docket Clerk at the Riverfront Office Center merits, in my view, the addition of a second hearing examiner. Hearing Officer Bazdar is overloaded with cases which means that for the cases that cannot be resolved the day of the hearing, the motorist suffers by virtue of delay.

The proposed amendments adding specific issues into administrative practice and procedure before the Department of Transportation is long overdue. Specifically, rules pertaining to requests for a continuance, rules for the granting of a supersedeas, and rules for intervention are necessary in that the General Rules of Administrative Practice and Procedure currently do not sufficiently cover these three areas, vis a vis, the Department's administrative hearing track.

With respect to 491.3(b)(ii), time requirements need to be implemented to prevent the Department from having to litigate cases whose causes of action accrued years prior. On the other hand, there are categories of individuals who will likely be denied access to administrative relief by virtue of where they live. For example, since the implementation of the National Driver Registry (a clearinghouse for motor vehicle information nationwide), member states with the computer capability are refusing to renew driver licenses for existing license holders in sister states. In the alternative, those driver licensing authorities are also refusing to issue driver licenses if the National Driver Registry indicates that there is a cancellation, recall, suspension, or revocation of that person's operating privileges in Pennsylvania. Strict adherence to the above-mentioned proposed regulation which says "*30 days after the date a person requesting the hearing knew or should have known that the person was not receiving credit*" is too short a time frame for an out-of-state motorist to both: 1) determine what the problem is in Pennsylvania; and 2) contact an attorney who is familiar with the issues who would be willing to proceed on their behalf within that 30 day time frame. Those individuals who make their own uncounseled requests for a hearing run the risk of being denied access to a hearing for non-compliance with the rules.

The provision quoted above will directly impact on all out-of-state motorists who, at one time or another, had an unresolved issue in Pennsylvania. It would be my recommendation that this proposed time frame be extended to 60 or 75 days to accommodate those out-of-state motorists who will be affected by the Department's action through the National Driver Registry.

I also welcome the regulation which articulates the separation of the adjudicatory function from representation of the Department. It is important that the hearing examiners maintain their autonomy and not be subject to influence of the entity responsible for their paychecks. In these particular cases, I applaud 491.2(a)(b) which prohibits ex parte discussions with the hearing officer and chief counsel for the Secretary. It is also in the public's interest to have confidence in the neutrality of their hearing examiners and I believe that this proposed rulemaking at 491.2(a) advances that interest.

I hope these comments are of some use to you.

Thank you for your consideration.

Sincerely,

David E. Hershey

DEH:tlk

OS-2 (4-95)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Chief Counsel
555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
(717) 787-5473

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November 30, 1999

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street - 14th Floor
Harrisburg, Pennsylvania 17120

Re: Proposed Regulation 18-349
67 Pa. Code 491 & 445
Administrative Practice and Procedure;
Outdoor Advertising Devices

Dear Mr. Nyce:

The Department of Transportation has received the attached comment regarding the above-referenced notice of proposed rulemaking from the following:

Lawrence R. Wieder, Esquire

Pursuant to Section 5(c) of the Regulatory Review Act, the Department is required to submit all comments on proposed regulation, received during the public comment period, to the Independent Regulatory Review Commission and the Legislative Standing Committees.

Please contact me if you have any questions.

Very truly yours,

Jerry McCoy
Assistant Counsel In Charge
Regulations

220/JM/mls
cc: The Honorable Joseph Battisto, Minority Chairman,
House Transportation Committee
The Honorable Richard A. Geist, Majority Chairman,
House Transportation Committee
The Honorable J. Barry Stout, Minority Chairman,
Senate Transportation Committee
The Honorable Roger Madigan, Majority Chairman,
Senate Transportation Committee

BRCP. 2329(3)

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Commonwealth of Pennsylvania
Department of Transportation

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OFFICE OF
CHIEF COUNSEL

AW..EN.. ..IEDER
DIRECT DIAL: 717 237-229
E-MAIL ADDRES: ..EDER..MWN.COM

November 18, 1999

Jerry, what do I do with this now? I think it's wrong. I interpret the language "if the moving party has unduly delayed" to mean that if the petitioner did not had enough sufficient to allow him time then he hasn't unduly delayed. Please advise your thoughts

Robert H. Raymond, Jr.
Deputy Chief Counsel
Office of Chief Counsel
Forum Place
555 Walnut Street - 9th Floor
Harrisburg, PA 17101-1900

Re: Pennsylvania Bulletin, Vol. 29, No. 43

Knowledge

Dear Mr. Raymond:

We write in response to the Department's notice, published in the Pennsylvania Bulletin, Vol. 29, No. 43, October 23, 1999.

The Department proposes to amend its regulations at §491.6(d)(2)(i) to provide as follows:

(2) Refusal.

(i) Delay. A petition for intervention may be refused if the moving party has unduly delayed in applying for intervention <u>or the intervention will unduly delay or prejudice the hearing or the adjudication of the rights of the parties</u>. (Emphasis supplied.)

As an attorney who has filed numerous Petitions to Intervene, typically in situations involving the issuance of highway occupancy permits, I am troubled by the portion of the proposed regulation that deprives an intervenor of his due process rights. I can fully understand the basis upon which an intervenor can be required to raise his objections in a timely manner. However, the timeliness of the objections can only be

based upon the knowledge of the intervenor; they cannot be based upon the actions of those who have been involved in the process that the intervenor seeks to protest. To hold otherwise serves only to promote stealth and secrecy.

A similar situation occurs under municipal law, where one has applied for and obtained a building permit. Due to the nature of the process, it is not unusual to have a situation where neighbors do not become aware that a permit has been issued, until construction starts. In those situations, there is a plethora of case law, holding that an interested party may object to the issuance of the building permit and demand a hearing, more than thirty days after the permit had been issued, if the Petitioner did not know, or could not have reasonably known, that the permit had been issued. In those situations, case law does not protect the permittee; it protects the interested party, because it is he who did not have the opportunity to participate in the proceedings and to have his objections heard.

Upon this basis, I believe that a proposed regulation which would prohibit one from filing a petition to intervene, because the rights of others, who had knowledge of the proceedings, would be prejudiced, is violative of due process. Unless, it is established that the party who is seeking to intervene, had knowledge sufficient to allow him to petition earlier in the proceedings, his rights cannot be abrogated by the regulation.

Very truly yours,

McNEES, WALLACE & NURICK

By 

Lawrence R. Wieder

LRW/jlh
cc: Mr. Gene Dawson
Mr. Steve Delamater
Ms. Diana Sweeney
Mr. Frank Marciano

Garner, Kim

From: Janelle Hersh [jhersh@mwn.com]
Sent: Monday, November 29, 1999 11:27 AM
To: irrc@irrc.state.pa.us; Larry Wieder
Subject: PennDOT regulation 18-349 re Admin. Practice and Procedure

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Mr. Nanorta:

Per your telephone message to Lawrence Wieder this morning, following is a copy of a letter sent to Robert H. Raymond, Jr. by Mr. Wieder on November 18, 1999. The letter was sent to Mr. Raymond during the comment period. Please either contact Mr. Wieder or myself at 717-237-5229, if you should need anything further.

Lawrence R. Wieder
Direct Dial: 717 237-5229
E-Mail Address: lwieder@mwn.com

November 18, 1999

Robert H. Raymond, Jr.
Deputy Chief Counsel
Office of Chief Counsel
Forum Place
555 Walnut Street - 9th Floor
Harrisburg, PA 17101-1900

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Very truly yours,

McNEES, WALLACE & NURICK

By
Lawrence R. Wieder

LRW/jlh

Janelle L. Hersh
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and Debra P. Fourlas
McNees, Wallace & Nurick
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