

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held December 9, 2021

George D. Bedwick, Chairman  
John F. Mizner, Esq., Vice Chairman, Dissenting  
John J. Soroko, Esq., Dissenting  
Murray Ufberg, Esq.  
Dennis A. Watson, Esq.

Order Issued January 19, 2022  
Regulation No. 16-64 (#3320)  
Department of State  
Representation in Charitable  
Organization Matters

On November 5, 2021, the Independent Regulatory Review Commission (Commission) received this regulation from the Department of State (Department). This rulemaking amends 19 Pa. Code, Part B, to add Article VI (19 Pa. Code §§ 101.1-101.3). Notice of proposed rulemaking was omitted for this regulation; it will become effective upon publication in the *Pennsylvania Bulletin*.

This final-omitted regulation relates to representation in charitable organization matters under the Solicitation of Funds for Charitable Purposes Act (Act) (10 P.S. §§ 162.1-162.24). The rulemaking adopts the General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 31.1-35.251) for activities and proceedings before the Secretary of the Commonwealth and the Department, with one limited exception: it would allow for non-attorney representation in actions and proceedings under the Act for corporations, limited liability companies, trusts, partnerships and other associations, as well as for agencies and political subdivisions.

The Department explains that adoption of this rulemaking would provide smaller, less-established charitable organizations with a cost-effective alternative for representation at agency hearings. These types of hearings, it contends, generally involve questions of fact and may not require the legal expertise of an attorney. Hearings conducted under the Act are designed to be brief and informal. The Department asserts that requiring attorney representation in all adversarial hearings involving business entities, agencies or political subdivisions undermines the informal, speedy and low-cost nature of administrative proceedings and may even dissuade parties from defending matters against them (Regulatory Analysis Form (RAF) #7 and 10, Preamble).

In addition to the information provided in the RAF and Preamble, the Department stated at the December 9th public meeting of the Commission that another benefit of the regulation would be a reduction in the need for continuances and delays in proceedings. Continuances occur when a party appears at a proceeding without attorney representation and has not petitioned the agency requesting permission for other representation. The Department reported at the Commission's public meeting that there are approximately 10 continuances annually (based on the last three years).

The Department also reported in the RAF that in the 2019-2020 fiscal year, it completed 389 investigations of charitable organizations, professional solicitors or fundraising counsels suspected of violating the Act. In that year, 43 Cease and Desist Orders were issued, 52 Consent Agreements were finalized and four adjudications were issued. Respondents in the 99 docketed matters were all advised of their right to obtain legal counsel. Approximately 60 percent of charitable organizations in these matters did not retain an attorney (RAF #16).

Based on the information provided in the submitted regulatory documents and the discussion at the December 9th public meeting of the Commission, we find that the rulemaking is not in the public interest for the following reasons:

*Need for the regulation; Clarity; and Implementation procedures*

GRAPP requires all parties, except for individuals appearing on their own behalf, to be represented by an attorney **unless otherwise permitted by the agency in a specific case**. 1 Pa Code §§ 32.21- 31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings). Since the possibility exists currently for entities to represent themselves in proceedings before the Department, we question the need for the regulation in its present form.

Notwithstanding the above, we also are concerned that this particular proposal does not sufficiently protect an individual's right to a fair and just proceeding. We concur that the hearings under GRAPP are designed to be quick and cost-effective but would note with equal emphasis that they are also meant to secure a "just . . . determination of the issues presented." 1 Pa. Code § 31.2 (relating to liberal construction)

The Department's representative described the nature of the hearings that would be affected by this rulemaking as "registration" issues. Based on the information submitted and the discussion at the Commission's public meeting, it is clear that proceedings under the Act have the potential to elevate to more serious matters. (RAF #16) We cannot ignore, at the risk of expediency, the potential negative impact of this rulemaking on parties who may not fully understand the perils of their decision. Among our concerns is the potential for individuals without a lawyer who testify in an adversarial hearing that could be held liable for a charity organization's wrongdoing or for persons running a charity organization who may be unaware of the possibility of self-incrimination.

Another concern with this final-omitted regulation is that it is unclear what kind of proceedings would be covered by it. The terms "*adversarial proceedings*," "*administrative hearings*," "*administrative proceedings*," "*hearings*," and "*formal proceedings*" are used interchangeably in the RAF and Preamble. In the proposed Annex, the term "*formal proceedings*" is used in Sections 101.2 (relating to applicability of general rules of practice and procedure) and 101.3 (relating to representation in formal proceeding), but it is not defined in the regulation.

The Preamble explains that the Secretary, through this regulation, would join other Commonwealth agencies that allow the option for non-attorney representation of certain business

entities in administrative proceedings. It includes, by way of example, the Department of Agriculture, the Labor Relations Board, and the State Health Facility Hearing Board. In the latter case, non-attorney representation of these types of business entities is limited to an appeal or petition before the hearing board. *See* 37 Pa. Code § 197.9(a) Similarly, we would point to the Public Utility Commission’s Rules of Practice and Procedure found at 52 Pa. Code § 1.21 and 1.23 (relating to appearance, and other representation prohibited at hearings) as another example of an agency’s rules that limit non-attorney representation to “nonadversarial proceedings” or “informal proceedings.” Each of these key terms, along with others, is defined in the PUC GRAPP regulations. If the Department proceeds with this rulemaking, it should likewise define “formal proceeding” and limit its application to nonadversarial matters or explain how the option for non-attorney representation of corporations, limited liability companies, trusts, partnerships, and other associations, as well as agencies and political subdivisions in adversarial proceedings is in the public interest.

Finally, this rulemaking lacks clarity regarding notices and the verification process used to determine whether an individual is authorized to represent the charitable organization. The Department should review and revise, if necessary, the incorporated provisions regarding notice of appearance to make certain that the process to petition the Department under 1 Pa. Code § 31.23(2) and the consequences of appearing without counsel are included should it submit a revised final-omitted rulemaking. The Department’s response to this order should also detail the verification process that it will use to determine whether an individual is authorized to represent the charitable organization.

We have determined this regulation is consistent with the statutory authority of the Department of State (71 P.S. § 282 and 10 P.S. § 162.4(3)) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



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George D. Bedwick, Chairman