

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**  
**1730 K STREET, N.W., 6<sup>TH</sup> FLOOR**  
**WASHINGTON, D. C. 20006-3868**

May 3, 1999

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 99-148-M
Petitioner	:	A. C. No. 16-01192-05508
	:	
v.	:	Docket No. CENT 99-149-M
PHOENIX ASSOCIATES LAND	:	A. C. No. 16-01192-05509
SYNDICATE,	:	
Respondent	:	Murphy Sand & Gravel

**ORDER TO RESUBMIT PENALTY PETITIONS**

These cases are before me upon petitions for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977. On February 26, 1999, penalty petitions were filed on behalf the Secretary which were answered by the operator on April 22, 1999.

I will not accept these penalty petitions. They have been filed on behalf of an individual who styles himself as a law clerk, but this "law clerk" did not sign the petition. In this case the law clerk did not even sign the petition. It is signed by an individual whose status and position are not given. In addition, the petitions contain the names of three Solicitors in ascending degrees of responsibility, but none of them has signed the motion. I have recently held that a law clerk from this regional office may not file settlement motions with the Commission. Bowen Industries, Inc., Docket No. CENT 98-268-M, 21 FMSHRC \_\_\_\_\_, (April 26, 1999). These cases present a situation where the individual who signed the petitions is even further removed from an attorney who is entitled to appear.

Commission Rule 2700.3, 29 C.F.R. § 2700.3, sets forth the individuals and categories of individuals who are permitted to practice before the Commission. Under subparagraph (a) attorneys are permitted to practice and under subparagraph (b) a non attorney may practice if he is a party, a representative of miners or certain designated individuals associated with specified entities. The law clerk on whose behalf the petitions were filed is not an attorney and is not one of the described non attorneys allowed to appear before the Commission. And the person who signed the petitions is a fortiori unacceptable and unqualified. Subparagraph (c) permits any other person to practice with the approval of the presiding judge or the Commission. My approval has not been sought for the appearance of the law clerk. Nor has my approval been sought for the appearance of the individual who signed the petition but whose position and responsibilities are completely unknown to me.

The filings from the Dallas Office of the Solicitor are in contrast to procedures previously followed by the national Office of the Solicitor in seeking permission for non attorneys to appear before the Commission. In 1994, when the Office of the Solicitor wished to have Conference and Litigation Representatives (CLR) appear on behalf of the Secretary in mine safety cases, information was furnished regarding the training and credentials of these individuals. Cyprus Emerald Resources Corp., 16 FMSHRC 2359 (November 1994). The very substantial experience and training of CLR's entitled them to appear before the Commission. Moreover, in every case where a CLR wishes to represent the Secretary, he has filed a motion for permission to appear.

The petitions filed in these cases must be refiled and signed by an attorney in the Office of the Solicitor. Otherwise a show cause order will be issued why these cases should not be dismissed for want of prosecution.

These unauthorized filings connote a serious lack of respect for the Commission which I find very disturbing. Any office that submits such pleading obviously attaches little importance to penalty cases under the Mine Act.

In light of the foregoing, it is ORDERED that within 21 days of the date of this order the penalty petitions be resubmitted and signed by an attorney in the Office of the Solicitor.

Paul Merlin  
Chief Administrative Law Judge

Distribution: (Certified Mail)

Brian L. Pudenz, Esq., Office of the Solicitor, U. S. Department of Labor, 525 Griffin Street, Suite 501, Dallas, TX 75202

Tom Mascolino, Esq., Office of the Solicitor, U. S. Department of Labor, Room 420, 4015 Wilson Boulevard, Arlington, VA 22203

Mr. Paul Alonzo, President, Phoenix Associates Land Syndicate, P. O. Box 1358, Covington, LA 70433

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