

FEDERAL MINE SAFETY AND HEALTH
REVIEW COMMISSION

July 2, 1999

DISCIPLINARY PROCEEDING : Docket No. D 99-1

APPLICATION FOR APPOINTMENT OF PROSECUTOR

This disciplinary matter was assigned to me on June 10, 1999, for hearing and decision, pursuant to the June 9, 1999, order of the Commission. It arose out of a referral for disciplinary proceedings by the Secretary of Labor.

On June 16, 1999, a Prehearing Order was issued to the parties receiving the Commission's order. On June 24, 1999, a response was received from counsel for the Secretary stating that: "[T]he role of the Department of Labor in this matter was limited to forwarding to the Commission information that may warrant disciplinary proceedings against Ms. Prater so that the Commission can [*sic*] take appropriate action. . . . The Department is not a party to these proceedings and does not expect to participate at the hearing in this matter." A copy of the response is attached to this application.

With the withdrawal of the Secretary, there is no one to represent the interests of the Commission in insuring that individuals practicing before it "conform to the standards of ethical conduct required of practitioners in the courts of the United States." 29 C.F.R. § 2700.80(a). Commission Rule 80(c), 29 C.F.R. § 2700.80(c), provides that the Commission "may designate counsel to prosecute the matter before the Judge."

Accordingly, application is made to the Commission for the appointment of counsel to prosecute this matter at the hearing.

T. Todd Hodgdon
Administrative Law Judge

FEDERAL MINE SAFETY AND HEALTH
REVIEW COMMISSION

DISCIPLINARY PROCEEDING)
Docket No. D99-1)
_____)

RESPONSE TO PREHEARING ORDER

On April 13, 1999, on behalf of the Mine Safety and Health Administration, the U.S. Department of Labor, Office of the Solicitor, referred Connie Prater for disciplinary proceedings pursuant to 29 CFR § 2700.80(c)(1). That provision states

... [A] Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. . .

Thus, the role of the Department of Labor in this matter was limited to forwarding to the Commission information that may warrant disciplinary proceedings against Ms. Prater so that the Commission can take appropriate action. Attached to the referral was all of the information the Department has regarding this matter. The Department is not a party to these proceedings and does not expect to participate at the hearing in this matter.

Respectfully submitted,

HENRY L. SOLANO
Solicitor of Labor

Edward P. Clair
Associate Solicitor

U.S. Department of Labor
Office of the Solicitor
4015 Wilson Boulevard
Suite 400
Arlington, Virginia 22203
(703) 235-1153

SHEILA K. CRONAN
Counsel for Trial Litigation

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **RESPONSE TO
PREHEARING ORDER** was mailed this 23rd day of June, 1999, to:

David J. Farber, Esq.
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037

Sheila K. Cronan

Distribution:

Sheila K. Cronan, Esq., Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard, Suite 400, Arlington, VA 22203 (Certified Mail)

David J. Farber, Esq., Patton Boggs, L.L.P., 2550 M Street, N.W., Washington, D.C. 20037 (Certified Mail)

/nj