

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 Skyline, Suite 1000  
5203 Leesburg Pike  
Falls Church, Virginia 22041

February 29, 2000

IN THE MATTER OF: : DISCIPLINARY PROCEEDING  
CONNIE PRATER, :  
: Docket No. D 99-1

## ORDER GRANTING WITHDRAWAL OF COUNSEL AND ORDER TO SHOW CAUSE

This disciplinary proceeding is before me on referral from the Commission pursuant to Rule 80, 29 C.F.R. § 2700.80. On December 20, 1999, counsel for the Respondent filed a letter stating: "I am writing to inform the Court that Ms. Connie Prater will be unable to proceed in this matter due to unexpected health reasons. Therefore, please withdraw my appearance for Ms. Prater. Further, please be advised that Ms. Prater will not make any further appearances before the Court." In his response to the letter, the Prosecutor pointed out that it was not clear whether the Respondent was requesting a continuance because of her "unexpected health" problems or whether she no longer intended to contest the charges in this proceeding.

On January 24, 2000, counsel for the Respondent filed a response to the Prosecutor's letter. Unfortunately, it is not any clearer as to what Ms. Prater's position in this proceeding is than the cryptic letter of December 20. He states that Ms. Prater "is currently fighting for her life against what I understand is a recurring cancer," but that he did not "intend to disturb Ms. Prater during her illness to obtain 'sworn affidavits' from her or her medical doctors." On the other hand, he states that: "I can represent to the Court without even discussing it with Ms. Prater that she would never" consent to an order determining her culpability for ethical misconduct. Counsel concludes by stating: "This proceeding, and the extreme infrequency with which she even participated in Commission proceedings in the past, is simply too remote to the core activities in her life to permit her to focus on this matter as she originally intended."

Counsel closed his January 24 letter by reiterating:

Finally, because I am essentially without a client, I indicated that I wished to withdraw from this case as well. I would appreciate the Court's advice as to whether it desires a formal motion pursuant to Rule 2700.3 or whether such a motion is unnecessary in the event that the Court will shortly resolve this matter.

Turning to the matter of withdrawal first, Commission Rule 3(d), 29 C.F.R. § 2700.3(d), provides that: "Any representative of a party desiring to withdraw his appearance shall file a

motion with the . . . Judge." Thus, counsel for the Respondent should have filed a motion if he wanted to withdraw. However, since the letter plainly states his position, I will treat it as a Motion to Withdraw rather than require the filing of another document. Accordingly, the request to withdraw is **GRANTED**. With the exception of this order, no further documents in this proceeding will be served on counsel. This, and all further documents, will be served directly on the Respondent.

Next, as the Prosecutor correctly observed in his response to the January 24 letter, if Ms. Prater desires that this proceeding be continued until such time as her illness permits her to participate, she must accompany her request with an affidavit from her treating physician setting forth the nature of her illness, how long she has been ill, the reason the illness renders her incapable of participating in the proceedings, and the probable length of time she will be unavailable before the proceeding can resume. Such an affidavit may not be conclusory, but must set forth a medical history and prognosis of Ms. Prater's condition, substantiate the medical basis for concluding that her health conditions preclude her from participating in the proceedings at this time and identify any medical restrictions that should be placed on her participation in pretrial examination or at trial.

If the Respondent is not seeking a continuance, but does not intend to participate in the proceedings at all, she should be aware that failure to participate will result in her being found in default and the issuance of a disciplinary order, "which may include reprimand, suspension, or disbarment from practice before the Commission." 29 C.F.R. § 2700.80(c)(3). In this connection, Commission Rule 66(a), 29 C.F.R. § 2700.66(a), requires that: "When a party fails to comply with an order of a Judge or these rules . . . an order to show cause shall be directed to the party before the entry of any order of default . . . ."

Therefore, in accordance with Rule 66(a), the Respondent is **ORDERED TO SHOW CAUSE**, within 21 days of the date of this order, why she should not be held in default in this matter. The Respondent shall comply with this order by filing a statement that she is ready to proceed, by requesting a continuance in the manner set out above, or by filing a statement acknowledging that she is aware of the possible penalties facing her and stating that she does not desire to participate in the proceedings. **Failure to comply with this order will result in the issuance of a disciplinary order adjudging a reprimand, suspension or disbarment from practice before the Commission.** The Prosecutor shall file comments on the Respondent's response to this order, or lack of response, within ten days of receiving the response, or the expiration of time for a response, whichever occurs first.

T. Todd Hodgdon  
Administrative Law Judge  
(703) 756-6213

Distribution:

Peter A. Eveleth, Special Counsel to the General Counsel, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Room 10308, Washington, D.C. 20570-0001 (Certified Mail)

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

Ms. Connie Prater, 2057 Kentucky Route 850, David, KY 41616 (Certified Mail)

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