

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

August 18, 1999

DISCIPLINARY PROCEEDING : Docket No. D 99-1

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen and Beatty, Commissioners

ORDER

BY THE COMMISSION:

This matter was docketed by the Commission and assigned to Administrative Law Judge T. Todd Hodgdon following a Referral for Disciplinary Proceedings filed with the Commission by the Secretary of Labor. On July 2, 1999, the judge transmitted to the Commission an Application for Appointment of Prosecutor in this matter. The application states that, in response to a prehearing order, the Secretary of Labor asserted that she "is not a party to these proceedings and does not expect to participate at the hearing in this matter." Application at 1. The judge noted that, "[w]ith 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.'" *Id.* (quoting 29 C.F.R. § 2700.80(c)). The judge therefore requested "appointment of counsel to prosecute this matter at the hearing." *Id.*

Upon consideration of the application, it is granted. The Commission has decided to utilize the services of a government trial attorney to serve as prosecutor, and has determined administratively that the National Labor Relations Board ("Board") is able to furnish a trial attorney to prosecute this matter. The attorney selected by the Board shall enter his or her appearance before Judge Hodgdon.

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner

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Theodore F. Verheggen, Commissioner

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Robert H. Beatty, Jr., Commissioner

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