

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DAVID D. GRASS,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE

CASE NO. 22-85-TR-CVF
(OH1777003089D)

ENTRY

Entered in the Journal on July 25, 2022

{¶ 1} On February 1, 2022, David D. Grass (Respondent) filed a request for administrative hearing in this case.

{¶ 2} On February 23, 2022, the attorney examiner scheduled the case for a prehearing conference to discuss, among other issues, the potential for settlement of the case.

{¶ 3} The prehearing conference occurred, as scheduled, on March 8, 2022, but the parties were unable to resolve the case.

{¶ 4} On May 3, 2022, Respondent filed a request to dismiss the case citing to the age of the case and his inability to access information he feels is relevant to the consideration of the case.

{¶ 5} On May 18, 2022, Staff filed a memorandum contra motion to dismiss. In this pleading, Staff argued that it is not subject to Respondent's demand for discovery because the Commission's rules do not permit discovery on Staff. Continuing, Staff observes that, under Ohio Adm.Code 4901-1-10(C), Staff "shall not be considered a party to any proceeding" with respect to the discovery rules contained in Ohio Adm.Code 4901-1-16 to 4901-1-24. Further, Staff takes the position that Respondent has not demonstrated that he is entitled to discovery of "all body camera, radio and computer transmission, and dash camera video from the [inspecting] officer's vehicle," while at the same time suggesting that Respondent may seek and obtain this same information through a public records request to the Department of Public Safety, Ohio State Highway Patrol, who is the legal custodian of such information.

{¶ 6} By Entry issued July 12, 2022, an evidentiary hearing was scheduled to commence in this case, at the Commission's offices, at 10:00 a.m. on August 1, 2022.

{¶ 7} On July 15, 2022, Respondent informed the attorney examiner in an email message that he does not consider the prehearing discovery process in this case to be complete, indicating that Respondent has not yet received from the Ohio Highway Patrol, materials that he considers necessary to adequately prepare for the hearing in this case.

{¶ 8} Ohio Adm.Code 4901-1-16(A) states that the purpose of rules 4901-1-16 to 4901-1-24 of the Administrative Code is to "encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in Commission proceedings." The same rule provision also indicates that these rules are "intended to minimize Commission intervention in the discovery process."

{¶ 9} Ohio Adm.Code 4901-1-16(B) states that, except as otherwise provided elsewhere in the rule:

any party to a Commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission. The frequency of using these discovery methods is not limited unless the Commission orders otherwise under rule 4901-1-24 of the Administrative Code.

{¶ 10} At this time, the attorney examiner finds that a discovery conference should be scheduled in this matter, and that it should occur before any hearing in this case will proceed. The purpose of the discovery conference will be to communicate with Respondent

as to his outstanding discovery concerns so that he can reasonably prepare for an evidentiary hearing. While Staff is not obligated as a party to respond to discovery requests in this case, the attorney examiner finds that open prehearing dialog between Staff and Respondent is beneficial to the Commission's consideration of this case.

{¶ 11} Accordingly, the hearing currently scheduled for August 1, 2022, is postponed. In lieu of the scheduled hearing, the attorney examiner schedules a telephonic prehearing conference for August 1, 2022, at 10:00 a.m. Both Respondent and Staff shall be expected to participate in the discovery conference, which will address the status of prehearing discovery, including informing Respondent as to what agencies within the state of Ohio, if any, might have the information he is seeking in order to prepare for his evidentiary hearing. Following the conference, Respondent will be provided a reasonable amount of time to seek records from any agency of the state of Ohio before the case is rescheduled for an evidentiary hearing. In order to participate in the discovery conference, each participant shall call 1-614-721-2972 and enter conference code 816 836 840# when prompted.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the hearing scheduled for August 1, 2022, is hereby postponed on an indefinite basis, as indicated in Paragraph 11. It is, further,

{¶ 14} That a discovery conference, at which both Respondent's and Staff's participation shall be required, is scheduled in accordance with Paragraphs 10 and 11. It is further,

{¶ 15} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Daniel Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/mef

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 22-0085-TR-CVF

Summary: Attorney Examiner Entry postponing the hearing and scheduling a prehearing teleconference for August 1, 2022 at 10:00 a.m. electronically filed by Ms. Mary E. Fischer on behalf of Daniel E. Fullin, Attorney Examiner, Public Utilities Commission of Ohio