

November 17, 2005

Alan L. Smith, Esq.
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David R. Irvine, Esq.
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RE: In the Matter of the Complaint of Georgia B. Peterson, *et al.*, Docket No. 04-035-70

Dear Alan and David:

I have reflected at length upon your letter to me dated November 7, 2005. I note that the Commission's November 4, 2005 order denies the requested stay of discovery.

I disagree with the conclusions drawn in your letter. I do not accept your contention regarding my use of the dissent in *Diprizio v. Industrial Commission*, 572 P.2d 679, 682 (Utah 1977). Also, although Alan, as the referenced counsel in *Beehive Telephone Company v. Public Service Commission*, 89 P.3d 131 (Utah 2004), must be intimately familiar with that case, I disagree with his written statement that, "And *Beehive* . . . holds that these penalties are mandatory and not discretionary."

Accordingly, I disagree with the conclusion that I have violated Rule 3.3 of the Code of Professional Responsibility. Nonetheless, I have attached the *Diprizio* and *Beehive* cases

to this response, and will provide the Commission and the ALJ with a copy of this response, as you did with your letter, so that the Commission and the ALJ can read the cases themselves.

Sincerely,

Patricia E. Schmid
Assistant Attorney General

PES/slc

Enc.

cc: Utah Public Service Commission
Administrative Law Judge
All Counsel of Record