

PATRICIA E. SCHMID (#4908)
JUSTIN C. JETTER (#13257)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380
pschmid@agutah.gov
jjetter@agutah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF PACIFIC ENERGY &
MINING COMPANY**

Docket No. 18-2602-01

**UTAH DIVISION OF PUBLIC UTILITIES'
MOTION FOR A PROTECTIVE ORDER
REGARDING CORRECTED NOTICES
OF DEPOSITION FILED BY PACIFIC
ENERGY & MINING COMPANY, AND
REQUEST FOR SHORTENED
RESPONSE TIME AND EXPEDITED
TREATMENT**

Pursuant to Utah Code. § 54-7-3 and Public Service Commission of Utah (Commission) rules R746-1-301 and R746-1-107, the Utah Division of Public Utilities (Division) hereby files this Motion for a Protective Order Regarding Corrected Notices of Deposition Filed by Pacific Energy & Mining Company (PEMC), and Request for Shortened Response Time and Expedited Treatment (Motion).

I. INTRODUCTION

A. Background

PEMC is a Nevada corporation in good standing in Utah. Mr. Tariq Ahmad is PEMC's president, director, secretary, and treasurer, and Mr. Dan Green has represented that he is PEMC's vice president.¹ See Attachment A.

On November 1-4, 2016, the Division's Pipeline Safety Section (UTPS) conducted an audit of PEMC's intrastate natural gas transmission line near Moab, Utah and consequently found 13 areas of noncompliance.² Through letters and emails from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation and/or remedy non-compliant activities. A brief description of activities follows:

1. By letter dated November 21, 2016, UTPS sent PEMC a notice of probable violations outlining 13 non-compliance items and requiring PEMC's response by December 23, 2016. PEMC did not respond by the due date.
2. Email correspondence from January 5, 2017 through February 2, 2017 between UTPS and PEMC discussed the past due response.³
3. Email correspondence dated March 22, 2017 from UTPS to PEMC reminded PEMC of the past due items⁴. Email correspondence dated March.22, 2017 from PEMC to UTPS indicated Dan Green, Vice President of Operations with PEMC, would be back April 1st, and would take care of outstanding items⁵.
4. By letter dated May 16, 2017, UTPS sent PEMC a warning letter requiring a response by May 24, 2017. PEMC sent its response dated May 25, 2017 with status updates stating: (1) the documents were being prepared and would be

¹ Corporate documents indicate that Dana Green is a director, but the Division does not know if Dana Green and Dan Green are the same person. See also item 3 in the list below.

²To date, only one area of noncompliance has been remedied. See item 6 in the list below.

³ Email correspondence involved UTPS' Chien Hwang and PEMC's Dan Green.

⁴ Email correspondence from UTPS' Connie Hendricks to PEMC's Dan Green.

⁵ Email correspondence from PEMC's Dan Green to UTPS' Connie Hendricks.

completed by June 30 or July 31, 2017, and (2) that Emergency Plan training was underway, and verification would be sent to UTPS when completed.

5. By letter dated June 23, 2017 UTPS advised PEMC that the proposed corrections were reviewed, and a follow-up inspection was scheduled for July 31-August 2, 2017.
6. On August 3-4, 2017, the follow-up inspection, No. 20170803JB, was conducted. This follow-up inspection verified that non-compliance item #10, "192.745 Valve maintenance: Transmission lines," had been corrected. The follow-up inspection also verified that the remaining 12 non-compliance items were still pending.
7. By letter dated August 14, 2017, UTPS outlined the remaining non-compliance items with a required response date of September 11, 2017.
8. On September 5, 2017, the UTPS inspector was included on a group email between Dan Green and Ricky Krebs, General Manager for MISTRAS Group, Inc., showing they were trying to locate the records. No records were provided.
9. By certified letter dated January 5, 2018, the Utah Attorney General's Office issued to PEMC its "Final Warning Letter – Corrective Action or Notice of Corrective Action Taken Required." PEMC's response to the Attorney General's Office and to UTPS was due February 20, 2018, and as of the date of this filing, no response has been received.
10. On April 12, 2018, the Division filed its Request for Agency Action on Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order Against Pacific Energy & Mining Company (Request for Agency Action).
11. Subsequently, Mr. Ahmad on behalf of PEMC and the Division made various filings.
12. On August 9, 2018, the Commission issued its Order Denying PEMC's Motion to Dismiss for Lack of Jurisdiction, and Notice of Hearing.
13. On August 10, 2018, Mr. Ahmad, on behalf of PEMC, made several additional filings, including the Corrected Notices of Depositions (singly Corrected Notice and collectively Corrected Notices) discussed below.

B. Corrected Notices of Deposition

On August 10, 2018, Mr. Ahmad filed with the Commission documents entitled "Corrected Notice of Deposition Al Zadeh" (Attachment B) and "Corrected Notice of

Deposition Jimmy Betham” (Attachment C).⁶ Each Corrected Notice stated, “NOTICE IS HEREBY GIVEN that, pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Tariq Ahmad will take the deposition of [Al Zadeh or Jimmy Betham, respectively] on Friday September 7, 2018, beginning at 2:00 p.m.”⁷ The Corrected Notices continued, stating that “The deposition will be conducted by Ahmad and counsel for the parties above” and will take place at the office of Mr. Terry Spencer, an attorney licensed in Utah, of Spencer & Collier, PLLC, Sandy, Utah.⁸

C. Division’s Contact with Mr. Spencer, Esq.

On August 13, 2018, Ms. Patricia E. Schmid, Division counsel, contacted Mr. Spencer to inquire whether he was representing PEMC. Among other things, Mr. Spencer informed Division counsel that he did not represent PEMC in this docket, but that he has performed and does perform other legal work on behalf of Mr. Ahmad.

II. ARGUMENT

A. PROTECTIVE ORDER IS NECESSARY

The Division requests that the Commission issue a Protective Order prohibiting Mr. Ahmad from taking the depositions of Mr. Zadeh and Mr. Betham.⁹ Not only are there constitutional and statutory grounds, and applicable court rules, prohibiting Mr. Ahmad, a non-lawyer, from taking the depositions, but also there are procedural deficiencies rendering the Corrected Notices null and void. Accordingly, a Protective Order is warranted. Mr. Ahmad’s filings have already burdened the Division and delayed

⁶ Mr. Ahmad’s originally filed notices each specified that the depositions would begin at 2:00 a.m. Further, Mr. Ahmad separately filed could be called traditional civil litigation discovery requests. This Motion does not address those requests, but by not doing so, the Division is not waiving any objections or claims. The discovery request document was also captioned “Notice of Deposition Jimmy Betham.”

⁷ Corrected Notices at p. 1.

⁸ Corrected Notices at p. 1.

⁹ Utah Rule of Civil Procedure 37 explicitly allows for a protective order to be issued in discovery matters.

this proceeding. His continuing to act in a representative role for PEMC threatens to further burden the process.

1. Constitutional Grounds

Article 8, Section 4 of the Utah Constitution, Court Rule 14-802(c), and -R746-1-107(3) should not be construed as permitting Mr. Ahmad on behalf of PEMC to take the above referenced depositions. To do so likely would be unconstitutional because Mr. Ahmad's taking the deposition should be construed as the unauthorized practice of law.

The Utah Supreme Court's authority to regulate the practice of law in Utah is established by Article 8, Section 4 of the Utah Constitution. In pertinent part, it states, "The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law."¹⁰

What constituted the practice of law was discussed in *Utah State Bar v. Summerhayes & Hayden*, 905 P.2d 867 (Utah 1995), which predated the adoption of Utah Court Rule 14-802. The *Summerhayes* case stated:

The practice of law, although difficult to define precisely, is generally acknowledged to involve the rendering of services that require the knowledge and application of legal principles to serve the interests of another with his consent. . . . It not only consists of performing services in the courts of justice throughout the various stages of a matter, but in a larger sense involves counseling, advising, and assisting others in connection with their legal rights, duties, and liabilities . . . It also includes the preparation of contracts and other legal instruments by which legal rights and duties are fixed.¹¹

Uncertainty about what constituted the practice of law in part prompted the promulgation of Utah Court Rule 14-802, appended at Attachment D. Utah Court Rule 14-802(c)

¹⁰ The Court's authority has been consistently recognized. See, e.g., *Injured Workers Association of Utah v. State*, 374 P.3 14 (Utah 2016).

¹¹ *Summerhayes* at pp. 869-70.

states, “whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted . . . acting as a representative before administrative tribunals....as authorized by tribunal or agency rule or practice.”¹² Commission Rule R746-1-107 states that a non-individual party may “represent itself through an officer or employee.”

Other relevant portions of Court Rule 14-802 state that a nonlawyer is permitted to “provide[] general legal information, opinions, or recommendations . . . but not specific advice related to another person’s facts or circumstances.”¹³ The court rule also permits a non-lawyer to “advise[] or prepare[] documents for others in the following described circumstances and by the following described persons:[setting forth six categories of persons not applicable here]”¹⁴

By “taking” the depositions as he states in the Corrected Notices, Mr. Ahmad would be moving from appearing before the Commission as permitted by Court Rule 14-802(c)(8) and to venturing into the unpermitted unauthorized practice of law. By taking the deposition, he would not be appearing *before* the Commission – the deposition would not be taken in front of the Commission. Far from allowing a party to appear for the limited purpose of a hearing or other courtlier proceeding, as contemplated by the rule, Mr. Ahmad would be undertaking significant discovery responsibilities that burden the Division and threaten to further delay the proceedings in this case.

¹² Utah Court Rule 14-802(c)(8).

¹³ Utah Court Rule 14-802(c)(2).

¹⁴ Utah Court Rule 14-802(c)(12).

Further, by taking the deposition Mr. Ahmad would be engaged in the practice of law because he would not be “[p]roviding general legal information, opinions, or recommendations about possible rights, remedies, defenses, procedures, options or strategies,” but instead he would be providing “specific advice related to another person’s facts or circumstances” by developing questions and pursuing legal theories during the deposition. Taking a deposition also is inconsistent with advising or preparing documents for others in certain described circumstances by described persons permitted by the rule. Finally, it is critical that depositions be taken only by a lawyer for a number of other reasons, not the least of which is that if an objection is raised during a deposition, most often the objection is noted, but generally the question itself is answered.¹⁵ Allowing a non-lawyer such as Mr. Ahmad to take a deposition likely could permit abuse of process due to his unfamiliarity with the law and legal process. His inartful Corrected Notices and failure to follow appropriate discovery procedures and extend common professional courtesies, like consulting with opposing counsel before scheduling a deposition, has cost the Division hours of labor in response and threatens to delay these proceedings, which are now nearly two-years distant from the inspection leading to this action. Thus, issuance of the requested Protective Order is warranted.

¹⁵ See Rule 30(c)(2) of the Utah Rules of Civil Procedure.

2. Statutory Grounds

The Utah Code also prohibits the unauthorized practice of law. Section 78A-9-103 states in relevant part:

78A-9-103 Practicing law without a license prohibited -- Exceptions.

- (1) Unless otherwise provided by law or court rule, an individual may not practice law or assume to act or hold himself or herself out to the public as an individual qualified to practice law within this state if that individual:
- (a) is not admitted and licensed to practice law within this state;
 - (b) has been disbarred or suspended from the practice of law; or
 - (c) is prohibited from practicing law by court order entered pursuant to the courts' inherent powers or published court rule.

The fact that Mr. Ahmad is not admitted and licensed to practice law is undisputable.

The taking of deposition is a quintessential function of an attorney, whereby a party-opponent or its agent appears, and must appear if subpoenaed or face arrest and other consequences,¹⁶ and responds to questions concerning pending litigation. Mr. Ahmad has no legal right to represent PEMC by the Utah Constitution, statute, court rule, or Commission rule except to appear before the Commission in the limited capacity allowed by the Utah Supreme Court in Utah Court Rule 14-802.

Prohibitions against non-lawyers practicing law are in great part necessary to protect "persons," a term which includes corporations from the negligent or willful improper acts of their non-lawyer "lawyer." Mr. Ahmad's failure to file a reply to the Division's June 20, 2018 Response to PEMC's Motion to Dismiss for Lack of Jurisdiction, and his recent filed motion claiming that he should be permitted to do so

¹⁶ See Rule 45(h).

because of “excusable neglect,” further demonstrate why it is necessary persons be protected from non-lawyers practicing law.¹⁷

To the extent that Commission rule R746-1-107 addresses the practice of law and could be read as allowing activities by a non-lawyer that the court rule does not permit, the Commission’s rule would be unconstitutionally broad and inconsistent with Utah Code § 78A-9-103 and the court rule. For the foregoing reasons, the Commission should issue a Protective Order prohibiting Mr. Ahmad from taking the deposition of Mr. Zadeh and Mr. Betham.

3.. Procedural Deficiencies

Additionally, for the following procedural reasons, the Corrected Notices are deficient and fail to comply with Utah Code § 54-7-3 and the Utah Rules of Civil Procedure. The content of the Corrected Notices themselves supports issuance of the requested Protective Order.

The Corrected Notices cite Rules 30 and 45 of the Federal Rules of Civil Procedure (Federal Rules), but those rules do not provide the procedure or authority to take depositions in matters pending before the Commission. The Commission was created through delegation by the Utah Legislature. The Federal Rules are thus inapplicable, and the Corrected Notices’ reliance upon those rules renders the Corrected Notices improper and ineffective.

Utah Code § 54-7-3 specifies how the Commission may issue and administer subpoenas, depositions, and related matters, stating in most pertinent part:

. . .any party may in any investigation before the commission cause the depositions of witnesses residing within or without the state to be taken in the manner

¹⁷ The Division will file a separate response to this motion.

prescribed by law for depositions in civil actions in the district courts of this state, and may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.¹⁸

Rules 30 and 45 of the Utah Rules of Civil Procedure address depositions and related subpoenas. The Corrected Notices fail to comply with requirements set forth therein. Reasonable notice, required by Rule 30(b)(1), was not provided. The time between the filing of the Corrected Notices and the desired deposition date is unreasonably short. The Corrected Notices declare that both depositions will be taken at the same time – 2:00 pm, September 7th. Depositions should be taken individually not jointly. Rule 30(b)(1) also requires that the Corrected Notice “designate the *officer* who will conduct the deposition” (emphasis added). Mr. Ahmad is not an officer of the court and thus he does not and cannot satisfy this requirement. Furthermore, the Division was not contacted in advance about the desired deposition date, and Division’s counsel is unavailable September 5th, 6th, and 7th.¹⁹

Finally, there was no subpoena accompanying the Corrected Notices as required by Utah Code § 54-7-3 and Rule 45 to compel attendance. Attendance at a deposition cannot be compelled without a properly issued subpoena.²⁰

Accordingly, for the reasons stated above, the Division requests that the Commission declare the Corrected Notices null and void and prohibit Mr. Ahmad from taking the depositions of Mr. Zadeh and Mr. Betham by issuing the requested Protective Order.

¹⁸ Utah Code § 54-7-3(2).

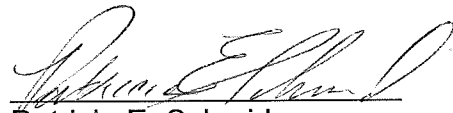
¹⁹ Counsel will be representing the Division in a hearing before the Commission on September 5th and will be out of town on September 6th and 7th.

²⁰ See Rule 45(a)(1)(D), Rule 45(c), and Utah Code § 54-7-3.

B. A SHORTENED RESPONSE TIME AND EXPEDITED TREATMENT IS WARRANTED

Because of the short time between the filling of the Corrected Notices, the filing of this Motion, and the stated deposition date, the Division respectfully requests that the Commission require PEMC's response, if any, be filed no more than three business days after the filing of this Motion. If the Commission so orders, the Division requests that the Commission also require the Division's reply comments, if any, be filed no more than three business days after the filing of PEMC's response. For the same reasons, the Division also requests that the Commission consider this matter expeditiously.

DATED this 17th day of August 2018.


Patricia E. Schmid
Attorney for the Utah Division
of Public Utilities

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing **UTAH DIVISION OF PUBLIC UTILITIES' MOTION FOR A PROTECTIVE ORDER REGARDING CORRECTED NOTICES OF DEPOSITION FILED BY PACIFIC ENERGY & MINING COMPANY, AND REQUEST FOR SHORTENED RESPONSE TIME AND EXPEDITED TREATMENT** to be served this 17th day of August 2018 by email and/or USPS mail, postage prepaid, to the following:

Tariq Ahmad
President
Pacific Energy and Mining Co.
3559 Barron Way, Suite 13A
Reno, NV 89511
taroil@yahoo.com

Dan Green
Vice President of Operations
Pacific Energy & Mining Company
3550 Barron Way, Suite 13A
Reno, NV 89511
dfgreen1@dslextreme.com

Rodney Nugent
Registered Agent – PEMC
17 West Main Street
P.O. Box 149
Green River, UT 84525


Chris Parker, Director, Division of Public Utilities
chrisparker@utah.gov

Al Zadeh, Pipeline Safety Lead
azadeh@utah.gov

DPU Data Request
DPUdatarequest@utah.gov

Patricia E. Schmid
pschmid@agutah.gov

Justin C. Jetter
jjetter@agutah.gov



Erika Tedder, Paralegal, DPU



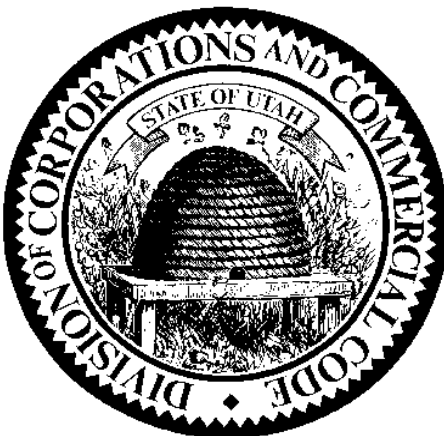
Utah Department of Commerce
Division of Corporations & Commercial Code
160 East 300 South, 2nd Floor, PO Box 146705
Salt Lake City, UT 84114-6705
Service Center: (801) 530-4849
Toll Free: (877) 526-3994 Utah Residents
Fax: (801) 530-6438
Web Site: <http://www.commerce.utah.gov>

August 14, 2018

CERTIFICATE OF EXISTENCE

Registration Number: 5977241-0143
Business Name: PACIFIC ENERGY & MINING COMPANY
Registered Date: 08/09/2005
Entity Type: CORPORATION - FOREIGN - PROFIT
Status: CURRENT

The Division of Corporations and Commercial Code of the State of Utah, custodian of the records of business registrations, certifies that the business entity on this certificate is authorized to transact business and was duly registered under the laws of the State of Utah. The Division also certifies that this entity has paid all fees and penalties owed to this state; its most recent annual report has been filed by the Division (**unless Delinquent**); and, that Articles of Dissolution have not been filed.



Jason Sterzer
Director
Division of Corporations and Commercial Code



Utah Department of Commerce
Division of Corporations & Commercial Code
160 East 300 South, 2nd Floor, S.M. Box 146705
Salt Lake City, UT 84114-6705
Phone: (801) 530-4849
Toll Free: (877) 526-3994 Utah Residents
Fax: (801) 530-6438
Web Site: <http://www.commerce.utah.gov>

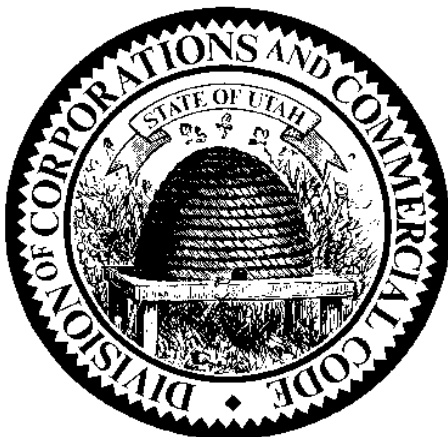
Registration Number: 5977241-0143
Business Name: PACIFIC ENERGY & MINING COMPANY
Registered Date: 08/09/2005

August 14, 2018

CERTIFICATE OF FACT

THE UTAH DIVISION OF CORPORATIONS AND COMMERCIAL CODE (“DIVISION”) HEREBY CERTIFIES THAT THE FOLLOWING ARE PRINCIPALS CURRENTLY ON FILE WITH THE ABOVE NAMED BUSINESS, HAVING MET ALL REQUIREMENTS FOR REGISTRATION IN THE STATE OF UTAH.

TARIQ AHMAD, DIRECTOR, PRESIDENT, SECRETARY, TREASURER
DANA GREEN, DIRECTOR



Jason Sterzer
Director
Division of Corporations and Commercial Code

TARIQ AHMAD
PRESIDENT
PACIFIC ENERGY AND MINING CO.
3550 Barron Way, Suite 13A
Reno, NV 89511
Telephone 775-333-6626
taroil@yahoo.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF PACIFIC ENERGY &
MINING COMPANY**

Docket No. 18-2602-01

**NOTICE OF DEPOSITION
AL ZADEH**

TO: AL ZADEH

DIVISION OF PUBLIC UTILITIES

PARTIES AND THEIR ATTORNEYS:

NOTICE IS HEREBY GIVEN that, pursuant to Rules 30 and 45 of the State of Utah Rules of Civil Procedure, Ahmad will take the deposition of Jim JIMMY BETHAM on , **Friday September 7, 2018**, beginning at 2:00 p.m. The deposition will be conducted by Ahmad and counsel for the parties above and will take place at:

TERRY R. SPENCER, Ph.D., P.C., #6335
SPENCER & COLLIER, PLLC
140 West 9000, Suite 9
Sandy, Utah 84070
Telephone: (801) 566-1884
Fax: (801) 748-4022

The deposition will be taken in-person upon oral examination, and shall be recorded by stenographic means, before an officer certified and authorized to administer oaths and affirmations, and shall continue until completed.

DATED this 10th day of August 2018.

A handwritten signature in black ink that reads "Tariq Ahmad". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Tariq Ahmad
President
Pacific Energy & Mining C.

PROOF OF SERVICE

I certify that I caused a true and correct copy of the foregoing to be served this 8th day of August 2018 by email to the following:

Chris Parker, Director Division of Public Utilities
chrisparker@utah.gov

Al Zadeh, Pipeline Safety Lead
azadeh@utah.gov

DPU Data Request
DPUdatarequest@utah.gov

Patrica E. Schmid
Justin C. Jetter
Assistant Attorney Generals
Counsel for Division of Public Utilities
pschmid@agutah.gov
jjetter@agutah.gov

Dated: August 10, 2018



Tariq Ahmad

TARIQ AHMAD
PRESIDENT
PACIFIC ENERGY AND MINING CO.
3550 Barron Way, Suite 13A
Reno, NV 89511
Telephone 775-333-6626
taroil@yahoo.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF PACIFIC ENERGY &
MINING COMPANY**

Docket No. 18-2602-01

**NOTICE OF DEPOSITION
JIMMY BETHAM**

TO: JIMMY BETHAM

PARTIES AND THEIR ATTORNEYS:

NOTICE IS HEREBY GIVEN that, pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Tariq Ahmad, will take the deposition of Jimmy Betham **Friday September 7, 2018**, beginning at 2:00 p.m.. The deposition will be conducted by Ahmad and counsel for the parties above and will take place at:

TERRY R. SPENCER, Ph.D., P.C., #6335

SPENCER & COLLIER, PLLC

140 West 9000, Suite 9

Sandy, Utah 84070

Telephone: (801) 566-1884

Fax: (801) 748-4022

The deposition will be taken in-person upon oral examination, and shall be recorded by stenographic means, before an officer certified and authorized to administer oaths and affirmations, and shall continue until completed.

DATED this 8th day of August 2018.



Tariq Ahmad
President
Pacific Energy & Mining C.

PROOF OF SERVICE

I certify that I caused a true and correct copy of the foregoing to be served this 8th day of August 2018 by email to the following:

Chris Parker, Director Division of Public Utilities
chrisparker@utah.gov

Al Zadeh, Pipeline Safety Lead
azadeh@utah.gov

DPU Data Request
DPUdatarequest@utah.gov

Patrica E. Schmid
Justin C. Jetter
Assistant Attorney Generals
Counsel for Division of Public Utilities
pschmid@agutah.gov
jjetter@agutah.gov

Dated: August 9, 2018



Tariq Ahmad

EXHIBIT A

I, Tariq Ahmad, make and execute this Affidavit based on my own personal knowledge:

1. I am over the age of 18 years, and am competent to testify in a court of law.
2. I am the person who has made an appearance in the above subject matter.
3. On June 20, 2018 I had surgery and was unable to work for two weeks.
4. I am still under Doctors care.
5. I am just getting back into the office to work on a part time basis and have noticed that I missed a few documents that had been filed, one of which was

the Response by the Division filed during June 20, 2018. I ask the Commission to take into consideration the Reply brief due to my being out of the office with medical issues.

PURSUANT TO Utah Code Ann. 78B-5-705, I declare under the penalty of perjury of the State of Utah that the foregoing is true and correct.

Dated this 8th day of August, 2018.

/s/ Tariq Ahmad

RULE 14-802. AUTHORIZATION TO PRACTICE LAW, UT R BAR SPECIAL PRAC...

West's Utah Code Annotated
State Court Rules
Utah Code of Judicial Administration
Part II. Supreme Court Rules of Professional Practice
Chapter 14. Rules Governing the Utah State Bar
Article 8. Special Practice Rules

UT Special Practice Rule **14-802**

RULE **14-802**. AUTHORIZATION TO PRACTICE LAW

Currentness

(a) Except as set forth in subsection (c) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in **Utah**.

(b) For purposes of this rule:

(b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

(b)(2) The “law” is the collective body of declarations by governmental authorities that establish a person’s rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person’s rights, duties, constraints and freedoms.

(b)(3) “Person” includes the plural as well as the singular and legal entities as well as natural persons.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

RULE 14-802. AUTHORIZATION TO PRACTICE LAW, UT R BAR SPECIAL PRAC...

- (c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.
- (c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.
- (c)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of **Utah** when no fee is charged to do so.
- (c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.
- (c)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.
- (c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the **Utah** Legislature.
- (c)(7) Representing a party in any mediation proceeding.
- (c)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.
- (c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.
- (c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.
- (c)(11) Lobbying governmental bodies as an agent or representative of others.
- (c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

RULE 14-802. AUTHORIZATION TO PRACTICE LAW, UT R BAR SPECIAL PRAC...

(c)(12)(A) a real estate agent or broker licensed by the state of **Utah** may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(B) an abstractor or title insurance agent licensed by the state of **Utah** may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(C) financial institutions and securities brokers and dealers licensed by **Utah** may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(D) insurance companies and agents licensed by the state of **Utah** may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Credits

[Adopted effective June 7, 2005; Amended effective November 1, 2006; November 1, 2007; November 12, 2010.]

Editors' Notes

ADVISORY COMMITTEE NOTE

Subsection (a).

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

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Because representing oneself does not involve another person, it is not technically the “practice of law.” Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: “Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person’s own interests in a cause to which the person is a party in his or her own right and not as assignee.”

Similarly, an employee of a business entity is not engaged in “the representation of the interest of another person” when activities involving the law are a part of the employee’s duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), “the law” is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and **court rules** and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law-and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person’s interests.

Subsection (c).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (c)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (c)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (c)(7) applies only to the procedures directly related to parties’ involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (c)(5)).

Relevant Additional Resources

Additional Resources listed below contain your search terms.

LAW REVIEW AND JOURNAL COMMENTARIES

An analytic approach to defining the “practice of law”-**Utah’s** new definition. Gary G. Sackett, 18 **Utah B.J.** 12 (Dec. 2005).

RULE 14-802. AUTHORIZATION TO PRACTICE LAW, UT R BAR SPECIAL PRAC...

The unauthorized practice of law: A paralegal's duty and responsibility-know the limits. Bonnie Hamp, 19 Utah B.J. 57 (Feb. 2006).

Special Practice Rule 14-802, UT R BAR SPECIAL PRAC Rule 14-802
Current with amendments received through May 15, 2018

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