

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FRANK MCANINCH	)	
	)	
COMPLAINANT	)	
	)	CASE NO.
V.	)	2013-00165
	)	
TAYLOR COUNTY RURAL ELECTRIC	)	
COOPERATIVE CORPORATION	)	
	)	
DEFENDANT	)	

ORDER

On September 3, 2013, the Commission ordered Complainant, Frank McAninch ("Complainant"), to submit additional documentation to support his complaint against Defendant, Taylor County Rural Electric Cooperative Corporation ("Taylor RECC"), and to refile certain documentation in compliance with Commission regulations pertaining to signing and certification of service. The Order held Taylor RECC's motions to strike and motion to dismiss in abeyance for 30 days, pending receipt of the aforesaid information.

Complainant tendered a response with the previously submitted documents attached. While each document was not individually signed, Complainant attached a signed certificate of service on the filing's final page. Complainant also included a document signed by his parents, Marshall McAninch and Vivien McAninch, in which they attested to their ownership of the property to which Complainant requested service at 3202 Poplar Hill Road, Liberty, Kentucky. Marshall and Vivien McAninch affirmed that Complainant is permitted to occupy the property and they are willing to grant an

easement for the installation of the requested electric service.<sup>1</sup> A Deed of Conveyance purporting to be for the property, dated April 10, 2004, documents the properties' transfer of ownership to Marshall and Vivien McAninch.<sup>2</sup>

On September 23, 2013, Defendant moved to strike Complainant's filing and renewed its motion to dismiss. Defendant first asserts that Complainant's September 19, 2013 response was procedurally deficient through not being properly signed or containing a compliant certificate of service. It states that it is unclear to what the certificate of service on the last page of the response is intended to apply. Taylor RECC also argues that the statement signed by Marshall and Vivien McAninch is improperly notarized as the acknowledgement certifies the authenticity of the signatures but not of the document itself. Taylor RECC, therefore, moves to strike the documents from the record.

Defendant next argues that the property on which service was requested was transferred by Marshall and Vivien McAninch on November 8, 2006, to a revocable trust. In support, Defendant points to an attached Deed of Conveyance that evidences the property's transference from Marshall and Vivien McAninch to the Marshall McAninch Revocable Trust and the Vivien McAninch Revocable Trust (collectively "McAninch Trusts") with Marshall and Vivien McAninch as co-trustees of both trusts.<sup>3</sup> Accordingly, Defendant argues that Complainant has misrepresented ownership of the property, and because Complainant does not own the property, it contends the complaint should be dismissed on the basis that Complainant is unlawfully engaging in

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<sup>1</sup> Frank McAninch's Sept. 4, 2013 Response to Public Service Commission Order at 15.

<sup>2</sup> *Id.* at 16.

<sup>3</sup> Taylor RECC's Renewed Motions to Strike and to Dismiss, Ex. A.

the unauthorized practice of law.

In reply, Complainant argued that a person need not be an attorney as a prerequisite to file a complaint with the Commission.

The practice of law is broadly defined by Kentucky Supreme Court Rule 3.020, which states:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities or business relations of one requiring the services.

The practice of law includes representation before a state administrative agency.<sup>4</sup> The Commission has required that those representing the interests of others be licensed attorneys. The Commission has previously held:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.<sup>5</sup>

Commission regulations concerning formal complaints incorporate this requirement. 807 KAR 5:001, Section 19(2), states in part: "a complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by the entity's attorney." The regulation requires that a corporation or other entity, from the outset of a complaint proceeding, be represented by an attorney.

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<sup>4</sup> *Kentucky State Bar Association v. Henry Vogt Machine Co.*, 416 S.W.2d 727, 728 (Ky. 1967).

<sup>5</sup> *Howard B. Keen v. Carroll County Water District* (Ky. PSC Oct. 15, 2004) (citing Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. PSC June 15, 1981)).

Here, Taylor RECC has failed to establish that Complainant is attempting to represent interests other than his own. Complainant states that the property and building encompassed by the service request are owned solely by his parents, Marshall and Vivien McAninch.<sup>6</sup> Evidence provided by Taylor RECC demonstrates that the property at issue was transferred by Marshall and Vivien McAninch to two revocable trusts in 2006.<sup>7</sup> Complainant is admittedly seeking to commence utility service on property to which he does not have a legal ownership or possessory interest. However, regardless of whether the property is currently owned by Marshall and Vivien McAninch in their individual capacities or as trustees, they have satisfactorily demonstrated that Complainant is permitted to be on the property and they have consented to granting the necessary easement for the utility services.<sup>8</sup>

Only an individual "acting in his own behalf" may represent himself.<sup>9</sup> Complainant is not attempting to apply for service on behalf of the property owners, but is instead seeking to commence utility services in his own name and for his own use. Marshall and Vivien McAninch have not requested service in either their individual capacities or in their capacities as the trustees of the McAninch Trusts. Complainant is advocating purely on his own behalf and not on the behalf of the McAninch Trusts. Taylor RECC has not pointed to any prohibition on an individual requesting service on a property to which he does not have an ownership interest. To the contrary, Taylor RECC currently provides electric service to Complainant at another facility on this same

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<sup>6</sup> *Id.*

<sup>7</sup> Taylor RECC's Renewed Motions to Strike and to Dismiss, Ex. A.

<sup>8</sup> Frank McAninch's Sept. 4, 2013 Response to Public Service Commission Order at 15.

<sup>9</sup> *Frazer*, 393 S.W.2d at 782.

property, despite his lack of any ownership in the property served.<sup>10</sup> That Complainant is not attempting to represent interests other than his own is further demonstrated through the fact that the trustees to the McAninch Trust are not parties to this action and they need not be parties. Thus, as Complainant may request service in his individual capacity, so he may proceed with his complaint *pro se*. Accordingly, because Complainant is not attempting to represent another individual or entity, he is not engaged in the unauthorized practice of law and Taylor RECC's motion should be denied as a matter of law.

Next, in compliance with the Commission's September 3, 2013 Order, Complainant refiled all previously submitted documents. He also sent a copy to Taylor RECC as noted on the certificate of service on the filing's final page. Although, Taylor RECC questions Complainant's certificate of service due to its placement after the exhibits proffered by Complainant, the Commission's regulations merely require a certificate of service be included in a filing.<sup>11</sup> Commission regulations do not set forth any additional requirements regarding actual placement of the certificate. Complainant's certificate of service is sufficient to fulfill the purpose of a certificate of service in providing notice that the preceding documents were delivered to the indicated parties.

Taylor RECC additionally notes that Complainant did not individually sign the refiled documents. Complainant's signature appears only on the certificate of service on the final page of his filing. However, Complainant's filing substantially complies with the requirements set forth in 807 KAR 5:001, Section 4(3)(a), and the Commission's

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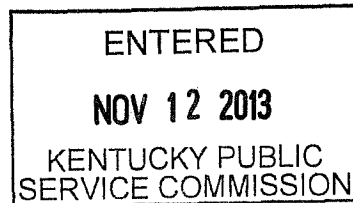
<sup>10</sup> Taylor RECC's Response to Commission Staff's Initial Request for Information at 2.

<sup>11</sup> See 807 KAR 5:001 Section 4(3)(a), Section 6.

September 3, 2013 Order, namely that the submitting party sign the paper and include his address and telephone number. As Complainant has, as required, mailed copies of all previously submitted documents to the proper parties and provided a certification of such mailing, complete with an original signature, the Commission finds that the lack of a signature preceding the certificate of service is an insufficient basis, standing alone, to strike Complainant's documents from the record. Complainant's documents should therefore be accepted for filing.

IT IS THEREFORE ORDERED that Taylor RECC's motions to strike and motion to dismiss are all denied.

By the Commission



ATTEST:

  
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