



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
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Warwick RI 02888
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Chairman Eila Germani
Commissioner Robert B. Holbrook
Commissioner Mary E. Bray

October 16, 2007

Attorney General Patrick Lynch
150 South Main Street
Providence, RI 02903

Re: Request for Advisory Opinion

Dear Attorney General Lynch:

I am writing on behalf of the Public Utilities Commission (Commission) to request an Advisory Opinion regarding a provision of the Rhode Island General Laws defining the practice of law and the Commission's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service (Termination Rules).

R.I. Gen Laws § 11-27-2 states in part: "Practice law' as used in this chapter means doing of any act for another person usually done by attorneys at law...and...includes the following: (1) the appearance or acting as the...representative of another person before any...division, department, commission, board...or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power...."

Part VI, Section 5(A) of the Termination Rules currently states in part: "As part of an evidentiary hearing, the parties shall have the following rights: (1) the right to appear in person and to retain, *and be represented by, counsel or another person of their choice...*" (emphasis added).

As way of background, customers facing termination of service by a regulated utility may request two reviews of a billing dispute or payment arrangement dispute from the Division of Public Utilities and Carriers (Division). The first review is in the form of an informal hearing with an employee of the Division. The customer may then request an additional review if the decision arising from the informal hearing is unacceptable. This second review, named a formal hearing, is the evidentiary hearing referenced above, is recorded by a stenographer, and may be appealed to the Rhode Island Superior Court in accordance with the Administrative Procedures Act.

The Division has indicated to the Commission a concern that Part VI, Section 5(A) of the Termination Rules violates the prohibition on the unauthorized practice of law. After a review of the broad language of R.I. Gen Laws § 11-27-2(a), the Commission agreed.

On September 27, 2007, the Commission issued draft amendments to the Termination Rules and struck the cited above, exchanging it with language that requires a customer to either appear *pro se* or with an attorney. During the public comment period, many consumer advocates spoke out against the change based on a public policy argument. One attorney brought to the Commission's attention a Rhode Island Supreme Court case, *Unauthorized Practice of Law Committee v. State Department of Workers' Compensation*, 543 A.2d 662 (R.I. 1998) (holding that provisions of state law allowing non-attorneys to represent employees at the Workers Compensation Commission during informal conferences was not unconstitutional as violative of the Supreme Court's exclusive power to regulate the practice of law). All provisions relative to the Department of Workers' Compensation cited by the Court have been repealed by the General Assembly. However, the reasoning of the Court based on cases from other jurisdictions may still be solid.

At the hearing, Chairman Germani requested Paul Roberti, Esq. to look into providing the Commission with an advisory opinion from your office as to whether Part VI, Section 5(A) of the Termination Rules currently allow non-attorneys to participate in the practice of law. After speaking with Mr. Roberti, I am simply following up with a formal request.

Please feel free to contact me if further facts are needed. Thank you for your consideration of this request.

Sincerely,



Cynthia G. Wilson-Frias
Senior Legal Counsel

Cc: Paul Roberti, Assistant Attorney General
Chief Public Utilities Regulatory Unit
(via electronic mail)