

**BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION  
STATE OF OHIO**

CHARLES M. DOUGLAS

: Case Nos. ERAC 273869, 273870  
: 274711, 274712, 274714-274717

JOHN E. DENNEY                      Appellants

v.

: **RULING ON MOTION**  
: **FOR CONTINUANCE, MOTION**  
: **FOR SUBSTITUTION, AND MOTION**  
: **TO REPRESENT**

DONALD SCHREGARDUS, DIRECTOR  
OF ENVIRONMENTAL PROTECTION, ET AL.

Appellees

Issued: January 4, 2001

On December 20, 2000, John M. Denney filed three motions with the Environmental Review Appeals Commission ("Commission") in the above-referenced cases. At the outset, the Commission again notes that Mr. John M. Denney did not properly serve counsel of record with his motions. On October 4, 2000, this Commission issued a ruling on earlier "motions" filed by John M. Denney which were also not served on counsel. In that ruling, the Commission reminded all parties that OAC 3746-5-19(B) requires that "service on a party represented by counsel *shall* be made on counsel." (Emphasis added.) John M. Denney and all parties to this case are again reminded of this rule and the necessity to serve counsel for all parties with all motions and other pleadings. In the future, failure to properly serve any pleadings will be grounds for rejection of the pleading.

The instant matter involves three motions filed by John M. Denney: a Motion for Continuance, Motion for Substitution, and Motion to Represent. Turning first to the Motion to Represent, the Commission DENIES the motion for the reasons set forth in its November 7, 2000 ruling. (Copy attached and courtesy copy sent to John M. Denney.) John M. Denney is not an

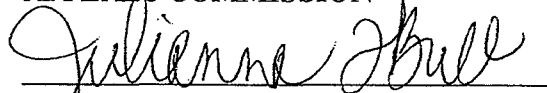
attorney and may not represent John E. Denney according to Ohio Revised Code Section 4705.01 and Ohio Administrative Code Section 3746-7-03(A.)

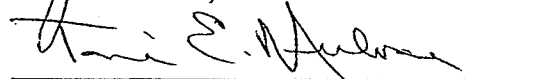
As to the Motion for Substitution, Mr. John M. Denney has not met the requirements of OAC 3746-5-27. As such, the Motion is DENIED.

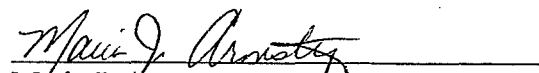
Finally, the Motion for Continuance filed by John M. Denney is DENIED. John M. Denney's status in these cases is as a potential witness. It is up to the parties in any case, not the witnesses, to determine who will be called to testify and when. If any party (John E. Denney, Charles M. Douglas or any Appellee) believes that John M. Denney is a material witness with relevant evidence to present at the *de novo* hearing, then that party must file the motion for continuance. Any such motion must clearly set forth the reason for requesting the continuance and be properly served on all other parties and, if a party is represented by counsel, that party's attorney.

Entered in the Case File  
of the Commission this 4<sup>th</sup>  
day of January, 2001.

THE ENVIRONMENTAL REVIEW  
APPEALS COMMISSION

  
Julianna F. Bull, Chair

  
Toni E. Mulrane, Vice-Chair

  
Maria J. Armstrong, Member

COPIES SENT TO:  
CHARLES M. DOUGLAS  
JOHN E. DENNEY  
Lauren C. Angell, Esq.  
Robert J. Karl, Esq.  
Margaret A. Malone, Esq.  
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USDA, RURAL DEVELOPMENT  
David E. Northrop, Esq.  
Nancy J. Miller, Esq.  
Mark E. Sheets, Esq.

## BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

## STATE OF OHIO

CHARLES M. DOUGLAS

: Case No. ERAC 273869, 274711,  
: 274712, 274714

JOHN E. DENNEY

: Case No. ERAC 273870, 274715,  
: 274716, 274717

Appellant,

v.

: **RULING ON MOTION**  
: **FOR EXTENSION, SETTING**  
: **OF AGENDA AND MOTION TO**  
: **ADDRESS MOTIONS**DONALD SCHREGARDUS, DIRECTOR  
OF ENVIRONMENTAL PROTECTION, ET AL.

Appellees

: Issued: November 7, 2000

On September 27, 2000, Appellant Douglas and John M. Denney filed a series of motions with the Environmental Review Appeals Commission ("Commission.") Because the Appellees had not been properly served, the Commission could not rule on all facets of the motions. As a result, the Commission was forced to delay ruling until a response from Appellees could be obtained. Specifically, the Commission asked Appellees to address Appellant's Motion for Extension and Motion for "Setting of Agenda."

In reviewing the motions, the Commission *sua sponte* recognized another issue related to John M. Denney's representation of John E. Denney. Upon review, it appeared to the Commission that John M. Denney, who is neither a party to the case nor an attorney, was requesting a continuance solely due to his inability to attend the hearing as scheduled. As such, the Commission asked Appellees to address the propriety of a lay person representing the legal interests of another in addition to responding to the two pending motions. Appellees were permitted ten days to file their responses. The Commission also allowed Appellants five days to file sur-replies to Appellees' responses, if they so chose.

On October 13, 2000, both Appellees timely filed their responses addressing all outstanding issues. On October 25, 2000, well after the five-day time frame set out by the Commission, Appellant Charles M. Douglas filed his sur-reply. Appellant Douglas, who is also not an attorney, includes as a part of his response a motion filed on behalf of John M. Denney titled "Motion for Clarification of Why ERAC and Appellees Want to Bar John M. Denney From Appeals." As of this date, the Commission has not received a reply from Appellant John E. Denney.

Upon a review of the pleadings, relevant case law, statutes and rules, the Commission rules as follows:

Ohio Revised Code Section 4705.01 clearly prohibits a person from representing another in any legal matter unless that person has been admitted to the practice of law in the state of Ohio. In addition, Ohio Administrative Code Section 3746-7-03(A) specifically prohibits a non-attorney from representing another before the Environmental Review Appeals Commission. Finally, the Disciplinary Counsel rulings and case law set forth in Appellees' responses are uncontroverted and dispositive.

Without even reaching the propriety of Appellant Douglas' filing this motion, it is clear that John M. Denney cannot act as his father's attorney, even with a power of attorney and even in a proceeding before an administrative tribunal such as the ERAC. As the case file establishes, this Commission has repeatedly accorded Appellants in these cases a great deal of latitude and respect. However, we cannot ignore the clear mandates of the Legislature and the Ohio Supreme Court. While this Commission typically grants *pro se* litigants considerable leeway, we must, by law, draw the line at permitting the unauthorized practice of law. As such, neither John M. Denney nor Charles M. Douglas may represent John E. Denney in the proceedings before this

Commission.

Construing the motions in the light most favorable to the Appellants, and without undermining the moral support John M. Denney may provide to his father, we find that John M. Denney is, at best, a witness in these proceedings. Through his reply, or at least in the caption, Appellant Douglas renews the Motion for Extension and Motion for "New Agenda." In keeping with our practice of granting *pro se* Appellants latitude, we GRANT the Motion for Extension. A new *de novo* hearing date is scheduled for June 18, 2001 at 10:00 A.M. through June 29, 2001. No further continuances will be granted.

As to the Motion for Setting New Agenda, this Commission cannot determine what relief is sought and, as such, the Motion is DENIED. Because Appellants have not yet filed the Case Management Schedule previously ordered by the Commission, the Commission hereby adopts Appellees' schedule, but modifies it in light of the newly established hearing date. As such the Case Management Schedule shall be as follows:

1. Discovery cut-off shall be May 11, 2001.
2. The exchange and filing of Witness Lists and Exhibits shall be April 13, 2001.
3. All dispositive Motions shall be filed on or before May 18, 2001.
4. Simultaneous filing and exchange of Briefs shall be June 4, 2001.
5. A Final Prehearing Conference will be held by telephone on June 12, 2001 at 10:00 A.M. Said telephone Prehearing Conference is to be established by Counsel for Appellee Director.

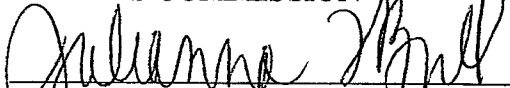
Finally, to assure that all potential issues or possible "motions" have been addressed, the Commission notes that Appellant Douglas' reply references OAC Section 3746-5-01, regarding parties to an appeal, and OAC Section 3746-5-27, regarding the substitution of parties. Each of

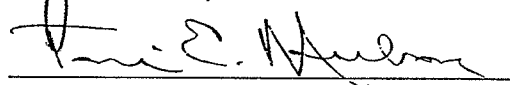
these issues purports to address the legal interests or standing of John M. Denney. Because Appellant Douglas is not an attorney, he may not raise these issues on behalf of another. To the extent Appellant Douglas' reply includes motions to add or substitute a party, they are DENIED. If John M. Denney wishes to intervene in the case pursuant to OAC 3746-5-04, he must file the appropriate motion on his own behalf or hire an attorney to represent him.

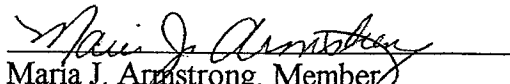
On a related note, the Commission advises Appellants that, while they may represent themselves in proceedings before this Commission, they will be expected to comport with the rules of the Commission. Moreover, they will be expected to conduct themselves in a respectful and professional manner. Collateral comments and disrespectful statements about other parties or this Commission are inappropriate and serve as a distraction to the task at hand.

Entered in the Case File  
of the Commission 7/11  
day of November, 2000.

THE ENVIRONMENTAL REVIEW  
APPEALS COMMISSION

  
Julianna F. Bull, Chair

  
Toni E. Mulrane, Vice-Chair

  
Maria J. Armstrong, Member

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Nancy J. Miller, Esq.  
Lauren C. Angell, Esq.  
Margaret A. Malone, Esq.



**Attorney General  
Betty D. Montgomery**

TO: All EES Attorneys  
FROM: Lauren C. Angell, AAG  
DATE: January 17, 2001  
RE: Practice at ERAC

LA

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**INTER-OFFICE COMMUNICATION**

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Attached please find a copy of two recently and related decisions from the ERAC regarding non-lawyers appearing before them on behalf of others.

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