

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

NOV 24 2009

ADMINISTRATIVE HEARING
COMMISSION

DIRECTOR OF THE DEPARTMENT)
OF INSURANCE, FINANCIAL)
INSTITUTIONS & PROFESSIONAL)
REGISTRATION)
STATE OF MISSOURI,)

Petitioner,)

vs.)

FRANK S. NORPHY,)

Respondent.)

Case No.: 09-0530 DI

**PETITIONER'S OBJECTIONS TO RESPONDENT'S MOTION FOR ADDITIONAL
TIME WITHIN WHICH TO RESPOND TO REQUEST FOR ADMISSIONS**

Petitioner, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, files his objections to Respondent Norphy's Motion for Additional Time to Respond to Request for Admissions in the above styled case.

1. It is undisputed that Respondent failed to respond to Petitioner's Request for Admissions within 30 days of the time the Request was mailed to him. See *Respondent's Motion*, paragraph 2. Pursuant to Supreme Court Rule 59.01, Respondent is deemed to have admitted the facts set forth in the Request.

2. Respondent's Motion is improper because it fails to ask for relief from or modify the deemed admissions in the form of a withdrawal of or amendment to the admissions. *In re A.S.O.*, 75 S.W.3d 905, 910 (Mo. App. W.D. 2002). "Rule 59.01 does not allow the court to act *sua sponte* with respect to withdrawal or amendment of an admission." *Dynamic Computer Solutions, Inc. v.*

Midwest Marketing Ins. Agency, LLC, 91 S.W. 3d 708, 716 (Mo. App. W.D. 2002).

3. Respondent's Motion is improper because it fails to show good cause why the Commission should grant any relief from the deemed admissions.

4. Respondent had the opportunity to review Supreme Court Rule 59.01 and regulation 1 CSR 15-3.420, both of which explain the consequences of failing to respond to Petitioner's Request for Admissions. Petitioner included copies of the Supreme Court Rule and regulation with his Request for Admissions which was mailed to Respondent on September 1, 2009.

5. Respondent's admissions do not appear to have been made in good faith because each of the 97 requests for admission is met with a response of "Deny" without regard for the facts contained in the request. Respondent is well aware of the truth of some of these requested admissions. For example, Respondent denies that he was issued a license by the Department in 2005 and that such license was suspended for tax non-compliance in 2008.

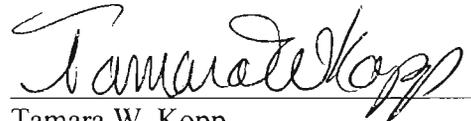
6. By delaying his response to Petitioner's discovery request, Respondent has denied Petitioner the opportunity to conduct adequate discovery prior to the hearing set for December 3, 2009.

7. Petitioner has relied upon Respondent's failure to respond to the Request for Admissions in preparing his case for trial.

8. Respondent's failure to respond to Petitioner's Request for Admissions is a violation of 20 CSR 100-4.100 and a ground for discipline of his insurance producer license pursuant to §§ 374.210 and 375.141.1(2), RSMo (Supp. 2008).

WHEREFORE, Petitioner respectfully requests that this Commission deny Respondent's Motion for Additional Time Within Which to Respond to Request for Admissions. If this Commission allows Respondent's Motion and permits modification of the admissions, Petitioner requests that a continuance be granted to allow Petitioner additional time in which to conduct supplemental discovery.

Respectfully submitted,



Tamara W. Kopp
Missouri Bar # 59020
Missouri Department of Insurance, Financial
Institutions & Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-2619
Facsimile: (573) 526-5492

ATTORNEY FOR PETITIONER
Director, Missouri Department of Insurance,
Financial Institutions & Professional
Registration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing, including all attachments, was mailed first class, with sufficient postage attached, via the United States Postal Service on this 24th day of November, 2009 to:

Charles A. Kellogg
400 West Kansas
Independence, Missouri 64050
Counsel for Frank S. Norphy

