

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT L. FARMER,

Petitioner,

v.

NUCLEAR REGULATORY
COMMISSION,

Respondent,

and

STATE OF ALASKA, DEPARTMENT
OF TRANSPORTATION AND PUBLIC
FACILITIES,

Intervenor.

ROBERT L. FARMER,

Petitioner,

v.

ELAINE CHAO, Secretary of Labor,
U.S. DEPARTMENT OF LABOR,

Defendant,

and

STATE OF ALASKA, DEPARTMENT
OF TRANSPORTATION AND PUBLIC
FACILITIES,

Intervenor.

No. 05-70718

NRC No. NRC-030-07710-CO
District of Alaska, Fairbanks

No. 05-70725

LABR No. ARB 04-002
District of Alaska, Anchorage

DEPARTMENT OF LAW
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**OPPOSITION BY THE STATE OF ALASKA
TO
PETITIONER'S MOTION TO WITHDRAW WITHOUT PREJUDICE**

The State of Alaska, Department of Transportation and Public Facilities ("State") opposes Robert L. Farmer's ("Farmer's") motion to withdraw without prejudice. The two petitions filed by Farmer while represented by counsel are without merit. They were probably filed for tactical reasons, and should be dismissed with prejudice, either on the merits after briefing, or for failure to timely file and respond in accordance with Circuit Rule 31-2, or by voluntary dismissal in accordance with FRAP 42. The State respectfully suggests that the clerk issue an order for Farmer to show cause within thirty days why the matter should not be dismissed in accordance with Circuit Rule 31-2. Under such an order, Farmer would be allowed thirty days to show compliance with Circuit Rule 31-2, or face dismissal with prejudice.

Even a preliminary review of the facts shows that Farmer did not completely comply with Circuit Rule 31-2.2(a). Undersigned counsel was not given notice of any request by Farmer for an extension to file briefs as required by Circuit Rule 31-2.2(a). Moreover, it is unclear from Farmer's motion whether the clerk was notified by telephone as required by the rule. There is no docket entry confirming a telephonic request by Farmer for an extension of time for filing briefs.

There is a critical problem with service on the State of Alaska that should be addressed immediately by the clerk. The State was not served with Farmer's motion entitled "MOTION TO WITHDRAW WITHOUT PREJUDICE" as certified by Farmer

1 on page 12 of said motion. Mr. Farmer specifically certified to the court that he served
2 undersigned counsel by fax on November 15, 2005. This did not happen. The motion
3 was delivered to undersigned counsel via fax by the Department of Labor attorney of
4 record, Mary Rieser, on November 16, 2005. Therefore, the State requests that the clerk
5 specifically direct Farmer to serve the State, which is a party to these two petitions as an
6 intervenor, by both fax (at 907-279-5832) and by mail to: Gary W. Gantz, Assistant
7 Attorney General for the State of Alaska, Department of Law, 1031 W. 4th Avenue,
8 Suite 200, Anchorage, Alaska 99501.
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11 If the clerk or the court decides to allow the withdrawal, it should be with
12 prejudice rather than without prejudice, as a withdrawal without prejudice could
13 conceivably allow Farmer to resurrect these two matters at a later time at his
14 convenience. This is not in the interests of justice. Such an effort to dismiss without
15 prejudice was attempted by Mr. Farmer once before in September, 2003 when he was
16 acting *pro se*. A dismissal without prejudice was disallowed by Judge Gee, the
17 Administrative Law Judge below, after the State objected and the court had reviewed
18 the facts.
19

20 DATED: November 16, 2005.

21 DAVID W. MÁRQUEZ
22 ATTORNEY GENERAL

23 By: 

24 Gary W. Gantz
25 Assistant Attorney General
26 ABA No. 6811030

CERTIFICATE OF SERVICE

This is to certify that on this date, a true and correct copy of
OPPOSITION BY THE STATE OF ALASKA TO PETITIONER'S MOTION TO
WITHDRAW WITHOUT PREJUDICE, and this CERTIFICATE OF SERVICE in
this proceeding was served by first class U.S. Mail on the following:

Robert L. Farmer
2707 Klamath Drive
Anchorage, AK 99517

Mary Rieser, Esq.
Office of the Solicitor
~~U.S. Department of Labor~~
200 Constitution Avenue NW
Room N2716
Washington, DC 20210

Jared K. Heck, Esq.
U.S. Nuclear Regulatory Commission
Mail Stop 015 D21
Washington, DC 2055-0001

and by certified mail, return receipt requested to:

Robert L. Farmer
2707 Klamath Drive
Anchorage, AK 99517
Article # 7003 2260 0001 0347 1554

Elizabeth A. Goodwin
Elizabeth A. Goodwin

11/16/05
Date