

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

AUG 4 2011

Missouri Public
Service Commission

The Staff of the Missouri Public Service)
Commission,)
Complainant,)
v.)
Laclede Gas Company, Laclede Energy)
Resources, The Laclede Group,)
Respondents.)

Case No. GC-2011-0098

**APPLICANT INTERVENOR LERA SHEMWELL'S MOTION FOR REHEARING OF
THE COMMISSION'S DENIAL OF APPLICATION TO INTERVENE**

Comes now Applicant Lera Shemwell ("Shemwell") and moves for rehearing of the Commission's July 27, 2011, Order Regarding Shemwell's Application to Intervene ("the Denial Order") and as grounds therefor, states as follows:

1. Commission Rule 4 CSR 240-2.080(7) applies to attorneys – not "staff."

The Rule in question states that:

(7) By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, *an attorney* or party is certifying to the best of the *signer's* knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, [that the contents are truthful and supported by evidence].(emphasis added.)

The Denial Order accepts Laclede's suggestion (without a commitment) that its counterclaim "seeks to establish that the Commission Staff, *as opposed to Staff's legal counsel*, does not have a good faith basis for positions it has taken in various complaint and actual cost adjustment (ACA) cases affecting Laclede." (emphasis added).

That position is absolutely contrary to the wording of the Counterclaim, and the plain language of the Commission Rule. Subparagraph (7) refers directly to an “attorney” who, in the course of “signing,” presents or maintains a “claim, defense, request, demand, objection, contention, or argument.” It is patterned after the Supreme Court rule governing the practice of law. In all of its post Counterclaim editorials, Laclede has never stated that Shemwell and the other attorneys are not among the targets of the Counterclaim. Instead, Laclede sidesteps the question, referring to Shemwell’s “slight” exposure based on just a few pleadings. Indeed, if Laclede would (by amendment or judicial admission) unequivocally confine its Counterclaim to non-attorney staff, then Shemwell would have no grounds for intervention.¹ But neither Laclede nor the Commission in its Denial Order restricts the scope of the Counterclaim. Thus, Shemwell is being denied intervention not because she could not be adversely affected by a ruling on the Counterclaim, but because the risk is perceived by some to be “slight.” In fact, the Commission has ruled in this case the Counterclaim “has stated claim upon which relief may be granted,”² thereby making the threat very real.

When it comes to one’s professional license, calling a risk “slight” is little comfort. Shemwell would invite those members of the Commission holding bar licenses (and also Laclede’s attorneys) whether they would shrug off a formal pleading alleging professional

¹ In making this challenge we do not concede that Rule 4 CSR 240-2.080(7) would be applicable to anyone *other than* attorneys in this case. It is only attorneys who provide the certifications required for each pleading. Those certifications are the tripwires that might cause a violation of the rule. Non-attorney staff provide no such certifications. Laclede’s shotgun strategy targets non-attorney staff who should not be subjected to the assault, but keeps Shemwell and the other attorneys in the danger zone.

² *Order Denying Staff’s Motion to Dismiss* dated May 26, 2011, page 4. That Order means the accusations against Shemwell are not theoretical or “slight” but are very real and provisionally valid. As an aside, the Order invites future litigants to imitate Laclede’s strategy and inject Rule 2.080(7) arguments into their cases. The strategy will be further encouraged if litigants are assured (by virtue of the denial of the right to intervene) that persons directly affected by the claim will not be allowed to defend the charges.

misconduct and just wait for the chips to fall without participating in the proceedings. Shemwell suspects all those licensed attorneys would, like her, seek the right to defend themselves.

2. The Denial Order Fails to Take Into Account the Obligation to Report Misconduct to the Office of Chief Disciplinary Counsel.

The Denial Order argues that Shemwell's bar license is not in jeopardy because "No one has indicated any intention to pursue an ethics complaint against her no matter how Staff's complaint and Laclede's counterclaim are decided." This position is seriously flawed in two respects.

First, the mere fact that Laclede or anyone else has not yet referred the matter to the OCDC does not mean they will never do so. If Laclede has the *hutzpah* to file such a Counterclaim in the first place formally accusing adversaries of professional misconduct, then it is not hard at all to envision Laclede referring the matter to the Office of Chief Disciplinary Counsel if there is a finding adverse to Shemwell or other licensed attorneys.

Second, and even more important, if there is a ruling adverse to Shemwell or any other licensed attorney, all licensed attorneys (including Commissioners and Laclede counsel) are obligated under the Missouri Supreme Court Rules to report misconduct to the OCDC. As noted previously, Commission Rule 4 CSR 240-2.080 tracks Missouri Supreme Court Rule 55.03(3). The latter specifically refers to "signers" *a/k/a* "attorneys." Missouri Rule of Professional Misconduct 4-8.3(a) states that:

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Misconduct that raises a substantial question of that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects *shall inform* the appropriate professional authority. (emphasis added)

Thus, if this Commission finds in favor of Laclede on its Counterclaim then all lawyers aware of that finding must report the finding to the Office of Chief Disciplinary Counsel or risk sanctions themselves.

3. Conclusion.

The Commission's Order denying Shemwell's Application to Intervene fails to acknowledge the impact that an adverse ruling on the Counterclaim would have on Shemwell's bar license. The Denial Order relegates Shemwell to sit in the bleachers and merely watch proceedings that could lead to disciplinary action against her. A referral to the OCDC is not discretionary. It would be mandatory. Laclede could easily eliminate this issue by defining the intended scope of its Counterclaim, but it will not. Laclede will not do so because its true intent really is to intimidate opposing counsel. Having invoked this unique tactic, Laclede cannot deny its significance.

Shemwell respectfully suggests that whenever a person's professional license is within the scope of an adversary's attack, then due process, fair play and professional integrity require that the person be allowed to defend herself.

Respectfully submitted,



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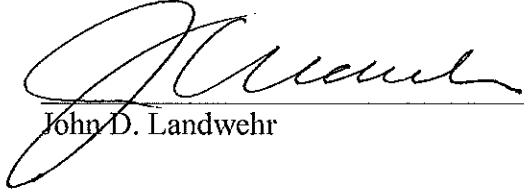
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Certificate of Service

I, the undersigned, do hereby certify that a true and accurate copy of the foregoing document was sent via electronic mail on this 1st day of August, 2011, to the following:

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