



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of: Ms. Dessie L. Brumfield, d/b/a Brumfield Properties, LLC Respondent Docket No. TSCA-05-2010-0014

ORDER ON RESPONDENT'S NOTICE OF CHANGE OF ATTORNEY AND CHANGE OF HEARING DATE, AND ON RESPONDENT'S COUNSEL'S NOTICE OF WITHDRAWAL

I. Background

The United States Environmental Protection Agency ("EPA" or "Complainant") initiated this proceeding on July 8, 2010, by filing a Complaint against Ms. Dessie L. Brumfield, d/b/a Brumfield Properties, LLC ("Ms. Brumfield" or "Respondent").

On July 26, 2012, Ms. Brumfield personally filed a Notice of Change of Attorney and Change of Hearing Da [sic] ("Respondent's Notice"), in which she advised the Tribunal that her counsel of record no longer represented her and that all mail should be sent to her directly until further notice.

1 In full, Respondent's Notice reads as follows:

This notice is to advise you that Attorney Thomas J. McClure is no longer representing me. All mail should be sent directly to Ms Brumfield, 5067 N. 37th St., Milwaukee, WI 53209. Until further notice.

(continued...)

On July 27, 2012, the undersigned's staff attorney contacted Respondent's counsel, who verified the accuracy of Respondent's Notice. On July 30, 2012, the undersigned received a Notice of Withdrawal from Respondent's counsel of record. In it, counsel described Respondent's Notice of July 26, 2012, as an "independent communication[]" initiated by Ms. Brumfield to inform both the undersigned and counsel that she wished to represent herself, and that it is clear to him that "she wishes to proceed pro se," without counsel's assistance and that he "should immediately provide this Notice of Withdrawal" so the parties can move forward with the hearing." Notice of Withdrawal at 1-2. Counsel stated that he would provide Ms. Brumfield with her file materials on July 30, 2012, and requested permission to withdraw as Respondent's counsel of record in light of Ms. Brumfield's assertion that he no longer represents her. *Id.* He also asserted that Respondent indicated that she understood the proceedings and would be capable of making necessary decisions in her interest. *Id.* at 1.

Also on July 20, 2012, the undersigned received Complainant's Response to Respondent Notice of Withdrawal and Respondent Notice of Change of Attorney and Hearing Date ("Complainant's Response"). Complainant stated that it would prefer that Ms. Brumfield be represented by Respondent's counsel of record and believes that the hearing "will proceed best if Respondent is represented by sound legal counsel with appropriate preparation." Complainant's Response at 1. However, Complainant also stated that it does not object to counsel's request to withdraw and that it remains prepared to go to hearing on the scheduled date. *Id.*

## **II. Relevant Legal Standards**

In administrative enforcement actions such as this, the presiding officer schedules the date and time of hearing giving "due regard" to the "convenience and necessity of the parties or their representatives." 5 U.S.C. § 554(b); 40 C.F.R. § 22.21. The parties must be given at least thirty days advance notice of the time and location of hearing. 40 C.F.R. § 22.21(b). Under the applicable rules of procedure, "[n]o request for postponement of a hearing shall be granted except upon motion and for good cause shown." 40 C.F.R. § 22.21(c).

The decision to grant or deny a request for continuance is generally submitted to the discretion of the presiding judge, who is tasked with conducting "a fair and impartial proceeding" while "avoid[ing] delay." 40 C.F.R. § 22.4(c) (powers and duties of presiding officer); *see*

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<sup>1</sup>(...continued)

Respondents is also requesting that the hearing date OF 8/7/12 @ 930 am, 517 E. Wisconsin Rm 498, Federal Building be set aside for another 30 days. in order to finalized paper work for new attorney and witnesses.

Respondent's Notice at 1.

*Ungar v. Sarafite*, 376 U.S. 575, 589 (1964) (matter of continuance traditionally left to discretion of trial judge); *United States v. Gates*, 557 F.2d 1086, 1088 (5th Cir. 1977) (same). While a “myopic insistence” upon speed “in the face of a justifiable request for delay” may interfere with a respondent’s right to appear by counsel, it is also the case that “not every denial of a request for more time” will violate a respondent’s rights even if respondent “is compelled to defend without counsel.” *Ungar*, 376 U.S. at 589. Whether a particular decision to grant or deny a continuance constitutes an abuse of discretion is necessarily a fact-specific question that depends on “the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” *Id.*

### **III. Discussion and Conclusions**

Ms. Brumfield received notice of this action no later than May 12, 2011, when she was finally served with the Complaint in person by a deputy sheriff almost a year after it had been filed. Approximately seven months later she retained counsel who proceeded to actively represent her interests in this matter. Notice of the time and location of the hearing in this matter was issued on March 30, 2012, approximately four months in advance of the hearing date. On July 12, 2012, a prehearing conference was held between the undersigned’s staff attorney, Respondent’s counsel, and Complainant’s counsel under the belief that Respondent’s counsel would represent Respondent at the impending hearing.

On July 26, 2012, less than two weeks before the date of hearing and without prior warning, Ms. Brumfield filed Respondent’s Notice informing the Tribunal, Complainant, and apparently her own counsel, that her counsel of record no longer represented her and that she was requesting a continuance. Ms. Brumfield did not supply any rationale for what appears to have been her unilateral decision to terminate her relationship with her counsel of record. She has not claimed that counsel was ineffective or failed to adequately represent her interests, and the record does not indicate that the representation provided to her was deficient. Where Respondent is requesting a continuance of the hearing date, Respondent has the burden of showing good cause justifying the relief sought.

To the extent that Ms. Brumfield requests a continuance to obtain new counsel, she has not indicated why she believes she requires new counsel in this proceeding. Litigants may not indefinitely postpone a matter by requesting time in which to seek representation. *Gates*, 557 F.2d at 1088 (quoting *United States v. Arlen*, 252 F.2d 491, 494 (2d Cir. 1958)); *Charles v. Rice*, No. 93-8062, 1993 WL 307892, at \*3 (5th Cir. Aug. 6, 1993). Ms. Brumfield has had over a year to obtain satisfactory counsel in her defense against the allegations in the Complaint, and she has in fact been represented by counsel for the past seven months. See *Chandler v. Fretag*, 348 U.S. 3, 10 (1954) (accused must have reasonable opportunity to obtain and consult counsel). She has not explained why she decided to terminate representation by her attorney and to postpone the hearing so close to the date the hearing is scheduled to commence. She has not provided information that would enable the undersigned to determine whether she is seeking new counsel for legitimate reasons or for the purpose of delaying the resolution of this proceeding.

Ms. Brumfield's reference to new witnesses is similarly unexplained. Respondent's Notice does not identify who might be "finalized" as a witness within the next thirty days, what these witnesses would testify to, and why they were not identified when Respondent filed her Prehearing Exchange in March 2012.

A postponement of a hearing on short notice is particularly inappropriate where opposing counsel has not consented to postponement,

Under the facts and circumstances present in this case, the undersigned finds that Respondent has not shown good cause for postponing the hearing in this matter by thirty days.

Accordingly, Respondent's request to postpone the hearing is **DENIED**.

Attorney Thomas J. McClure's request for permission to withdraw as counsel is **GRANTED**.

The hearing in this matter will be held in the Federal Building and U.S. Courthouse, Room 498, at 517 East Wisconsin Avenue, Milwaukee, Wisconsin, on August 7, 2012, and will begin promptly at 9:30 a.m. local time.

**Respondent is reminded that failure to appear at the hearing, either in person or by a representative of record, without good cause being shown therefore, may result in a default judgment being entered against her, with assessment of the full amount of the proposed penalty.**

SO ORDERED.



M. Lisa Buschmann  
Administrative Law Judge

Dated: August 2, 2012  
Washington, DC

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**In The Matter of Ms. Dessie L. Brumfield, d/b/a Brumfield Properties, LLC - Docket # TSCA-05-2010-0014**

**CERTIFICATE OF SERVICE**

I certify that the foregoing **Order on Respondent's Notice of Charge of Attorney and Change on Hearing Date, and on Respondent's Counsel's Notice of Withdrawal**, dated August 2, 2012 was sent this day in following manner to the addresses listed below:



Sybil Anderson  
Headquarters Hearing Clerk

Dated: **August 2, 2012**

Copy By Regular Mail And Email to:

Jeffrey M. Trevino  
Office of Regional Counsel  
US EPA - Region 5  
77 West Jackson Blvd  
Chicago, IL 60604-3590  
Email: [Trevino.Jeffrey@epa.gov](mailto:Trevino.Jeffrey@epa.gov)

Ms. Dessie L. Brumfield  
5067 N. 37<sup>th</sup> Street  
Milwaukee, WI 53290  
Email: [Dessiebrumfield@att.net](mailto:Dessiebrumfield@att.net)

LaDawn Whitehead  
Regional Hearing Clerk  
Region 5  
US EPA  
77 W. Jackson Blvd (E-19J)  
Chicago, IL 60604-3590  
Email: [Whitehead.LaDawn@epa.gov](mailto:Whitehead.LaDawn@epa.gov)

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