

From: Torem, Adam (UTC)

Sent: Tuesday, January 27, 2009 3:53 PM

To: Dave Alvarado

Cc: Thompson, Jonathan (UTC); Fassio, Michael (UTC); Rendahl, Ann (UTC); Walker, Kippi (UTC); Kaech, Margret (UTC); Russell, Marguerite (UTC); jimsells@rsulaw.com

Subject: RE: Northwest Industrial Services, LLC, d/b/a American On Site Services, Docket TG-081725 -- Witness Question & Exchange of Witness/Exhibit Lists

Mr. Alvarado,

I am glad you found my guidance helpful. I cannot make any further recommendation as to which form your written witness statement should take. Although I do not hesitate to provide guidance for *pro se* litigants seeking to understand the procedural rules governing our UTC hearings, I must be careful to ensure I remain a neutral and unbiased decisionmaker. Your current query requires me to offer legal advice on how you should proceed and, as the judge in this case, I respectfully decline to advise you on whether to submit a declaration or a sworn affidavit. For that question, you must seek out other counsel.

As to whether your witness and exhibit lists can be submitted electronically, I encourage you to review the language contained in the latter portions of the prehearing conference order to which I previously referred you. I do not recall the exact paragraph numbers, but there is explicit guidance about how to file all documents in this docket. Although some of the language in the prehearing conference order may appear to be boilerplate and could therefore be overlooked, I commend to you a thorough once-through review of that entire document as it may answer a number of questions about this proceeding.

Finally, you will notice that I re-included Mr. Sells and the UTC Staff's attorney(s) on this e-mail correspondence. As convenient as it may be to make contact with your designated judge to ask questions, the rules against *ex parte* contact (i.e., one party communicating with the decisionmaker outside the presence of the other parties) require that all such contacts be disclosed to the other parties. Therefore, in the case of any future questions you might send to an ALJ, it is best practice to include the representatives for all parties involved in the docket, ensuring there is no possible appearance of "behind the scenes" dealing. The rules regarding *ex parte* contact are very important to protecting the integrity of the hearing process for all involved.

Best regards,

Judge Torem

From: Dave Alvarado [mailto:dave_alvarado@air-pipe.com]

Sent: Tue 1/27/2009 9:25 AM

To: Torem, Adam (UTC)

Subject: RE: Northwest Industrial Services, LLC, d/b/a American On Site Services, Docket TG-081725 -- Witness Question & Exchange of Witness/Exhibit Lists

Judge Torem,

Thank you for your prompt reply regarding my witness. I have asked my witness to be available for a telephone interview, should the witness chose to decline that venue also I will submit his evidentiary letter as a sworn declaration or affidavit. I assume you will be determining my witness's credibility and value of the evidence they will be providing. As the residing Judge over our hearing and should his testimony be submitted in written form do you recommend it be submitted as a sworn declaration or affidavit?

Thank you also for directing me to Appendix B "Procedural Schedule Docket TG-081725 regarding my inquiry for filling our witness/exhibit list and hearing documents. I assume "File" is the operative word I should have been looking for. With that being said can my information be submitted via electronic filings?

Respectfully,

Dave Alvarado

From: Torem, Adam (UTC) [mailto:atorem@utc.wa.gov]
Sent: Monday, January 26, 2009 5:22 PM
To: Dave Alvarado; jimsells@rsulaw.com; Thompson, Jonathan (UTC)
Cc: Kaech, Margret (UTC); Rendahl, Ann (UTC); Russell, Marguerite (UTC); Walker, Kippi (UTC)
Subject: RE: Northwest Industrial Services, LLC, d/b/a American On Site Services, Docket TG-081725 -- Witness Question & Exchange of Witness/Exhibit Lists

Mr. Alvarado,

Thank you for your letter describing your shy witness and asking about the date to exchange witness/exhibit lists.

You may, of course, submit any relevant witness statements that you believe will assist your case. If your witness is unwilling or unable to testify at the hearing itself, the other parties are entitled to object to the admission of that witness's statement because they would be deprived of their right to cross-examine the witness. If I overruled such an objection and allowed you to submit the statement anyway, I may choose to attach less weight to that particular evidence. The ultimate value or weight of such evidence would depend on its credibility, such as whether it is simply a signed letter or a sworn declaration or affidavit. Regardless, the lack of cross examination would be factored into my consideration of any such witness statement. If you wish to ensure admissibility, please ask your witness to be available either in person or by telephone for the hearing.

On the latter topic, I direct you to review the attached Prehearing Conference Order which sets this coming Friday, 30 Jan 09, as the filing deadline for those lists. There will be no conference call or other contact between the parties and UTC, but only the filing of the lists.

We will conduct a telephonic status conference on Thursday, 12 Feb, as noted in the Prehearing Conference Order. That discussion should be quite similar in nature to our prehearing conference last month, but more focused on the following week's hearing.

I hope that this further explanation is helpful.

Judge Torem

From: Dave Alvarado [mailto:dave_alvarado@air-pipe.com]
Sent: Monday, January 26, 2009 2:12 PM
To: Walker, Kippi (UTC); jimsells@rsulaw.com; Thompson, Jonathan (UTC)
Cc: UTC DL ALD

Subject: RE: Northwest Industrial Services, LLC, d/b/a American On Site Services, Docket TG-081725 --
Notice of Prehearing Conference

Hi Kippi,

Can you please make sure Judge Torem gets a copy of the attached letter.

Thank you

Dave Alvarado

From: Walker, Kippi (UTC) [mailto:KWalker@utc.wa.gov]
Sent: Thursday, November 13, 2008 11:30 AM
To: dave_alvarado@air-pipe.com; jimsells@rsulaw.com; Thompson, Jonathan (UTC)
Cc: UTC DL ALD
Subject: Northwest Industrial Services, LLC, d/b/a American On Site Services, Docket TG-081725 --
Notice of Prehearing Conference

A courtesy copy of the following notice served today in Docket TG-081725 is attached:

**Notice of Prehearing Conference
(Set for December 3, 2008, at 1:30 p.m.)**

Thanks,

*Kippi Walker
UTC - Administrative Law Division
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1139*