

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

STATE OF OHIO

JOHN E. DENNEY

APPELLANT,

v.

**CHRISTOPHER JONES, DIRECTOR
OF ENVIRONMENTAL PROTECTION,
ET AL.**

APPELLEES.

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**CASE No. ERAC 273870, 274715,
274716, 274717**

ISSUED: JUNE 28, 2001

**RULING ON MOTION TO DISMISS
AND FINAL ORDER**

**THE ENVIRONMENTAL REVIEW
APPEALS COMMISSION:**

**Julianna F. Bull, Chair
Toni E. Mulrane, Vice-Chair
Maria J. Armstrong, Member**

**236 East Town Street, Suite 300
Columbus, Ohio 43215**

Telephone: 1/614/466-8950

APPELLANT PRO SE:

John E. Denney

COUNSEL FOR APPELLEE DIRECTOR

**Lauren C. Angell, Esq.
Margaret A. Malone, Esq.
Assistant Attorneys General
Environmental Enforcement Section
30 E. Broad Street - 25th Floor
Columbus, Ohio 43215**

**COUNSEL FOR APPELLEE GALLIA
COUNTY COMMISSIONERS:**

**David E. Northrop, Esq.
Nancy J. Miller, Esq.
SAMUELS AND NORTHROP CO.
180 East Broad St., Suite 816
Columbus, Ohio 43215**

On June 18, 2001, the Commission convened a *de novo* Hearing in the above-captioned matter wherein Counsel for Appellee Director and Counsel for Appellee Gallia County Commissioners were present. Appellant, having been properly notified of the hearing, failed to appear for said Hearing. Counsel for Gallia County Commissioners made an oral Motion to Dismiss Appellant for failure to prosecute his appeal in which Appellee Director joined. Therefore, this matter comes before the Commission on an oral Motion to Dismiss by Appellees. Based on a review of the record and the following facts, the Commission rules to GRANT the oral Motion to Dismiss.

FINDINGS OF FACT

1. This matter involves four appeals filed by Mr. John E. Denney. The files evidence that, although Mr. John E. Denney did sporadically sign some filings, he has never appeared before the Commission.

2. John E. Denney also filed a Power of Attorney purporting to give his son, John M. Denney, authority to represent him before the Commission. John M. Denney made numerous appearances before the Commission and filed a number of documents as representative of his father, John E. Denney.

3. On October 4, 2000, the Commission raised the issue of John M. Denney's authority to represent his father before the Commission, noting that John M. Denney had not been a party to the proceedings at issue, nor did it appear that he was an attorney who could represent another in

a legal proceeding pursuant to Ohio Revised Code Section 4705.01 and Ohio Administrative Code Section 3746-7-03. The Commission asked the parties to address this issue and file responses with the Commission.

4. On November 7, 2000, the Commission issued a ruling stating that, pursuant to case law and statute, John M. Denney could not represent John E. Denney before the Commission.

5. Despite this ruling, the Commission continued to receive filings from John M. Denney on behalf of his father. As such, the Commission reiterated its ruling on at least four separate occasions, each time advising Mr. John E. Denney that his son could not represent him before the Commission. Despite being advised of the procedure for intervention into a case and directed to case law regarding standing, John M. Denney never moved to intervene and never became a party to these cases.

6. On June 18, 2001, the Commission convened a *de novo* hearing in these appeals. The record indicates that all parties were given proper notice of the time, date and place of the hearing. Appellant John E. Denney did not appear for the hearing, nor did John M. Denney or any other person purporting to represent Appellant in these cases.

CONCLUSIONS OF LAW

1. Ohio Revised Code Section 4705.01 clearly prohibits a person from representing another in any legal matter unless that person has been admitted to the practice of law in the state of Ohio. In addition, Ohio Administrative Code Section 3746-7-03(A) allows any party to appear on his own behalf and specifically prohibits a non-attorney from representing another before the Environmental Review Appeals Commission. (OAC 3746-7-03).

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2. Further, case law makes clear that only a properly licensed attorney can represent another in a legal proceeding. The Ohio Supreme Court has specifically ruled that a non-lawyer with a power of attorney may not appear on behalf of another in a legal proceeding. See Disciplinary Counsel v. Coleman, 88 Ohio St 3d 155 (2000.)

3. John M. Denney is not an attorney, thus according to law, he cannot represent his father in these proceedings before the Commission. As Mr. John E. Denney was repeatedly advised, he may hire an attorney or represent himself in proceedings before the Commission.

4. Ohio Administrative Code Section 3746-5-28 authorizes the Commission to dismiss appeals when an appellant fails to pursue an appeal or fails to comply with Commission orders.

5. Appellant John E. Denney has repeatedly failed to comply with orders of the Commission, failed to properly respond to numerous motions, orders, and filings in this case, and failed to appear for the *de novo* hearing. Accordingly, the Commission finds Appellees' Motion to Dismiss for Failure to Prosecute, well taken.

FINAL ORDER

Based on the above, the Commission rules to grant the oral Motion to Dismiss and hereby **ORDERS** the above matters **DISMISSED**.

The Commission, in accordance with Section 3745.06 of the Revised Code and the Ohio Administrative Code 3746-13-01, informs the parties that:

Any party adversely affected by an order of the Environmental Review Appeals Commission may appeal to the Court of Appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulations to the court of appeals of the district in which the violation was alleged to have occurred. Any

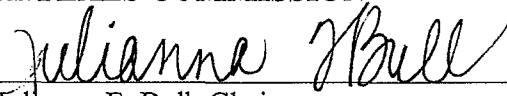
RULING ON MOTION
AND FINAL ORDER

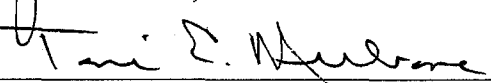
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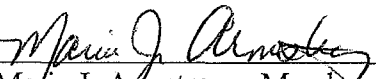
Case No. ERAC 273870, etc.

party desiring to so appeal shall file with the Commission a Notice of Appeal designating the order appealed from. A copy of such notice shall also be filed by the Appellant with the court, and a copy shall be sent by certified mail to the Director of Environmental Protection. Such notices shall be filed and mailed within thirty days after the date upon which the Appellant received notice from the Commission by certified mail of the making of an order appealed from. No appeal bond shall be required to make an appeal effective.

THE ENVIRONMENTAL REVIEW
APPEALS COMMISSION


Julianna F. Bull, Chair


Toni E. Mulrane, Vice-Chair


Maria J. Armstrong, Member

Entered in the Journal of the
Commission this 28th
day of June, 2001.

COPIES SENT TO:

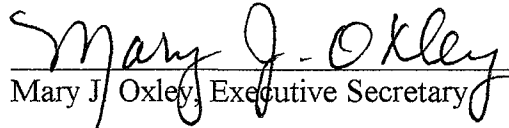
JOHE E. DENNEY	[CERTIFIED MAIL]
CHRISTOPHER JONES, DIRECTOR	[CERTIFIED MAIL]
GALLIA COUNTY BOARD OF COMM.	[CERTIFIED MAIL]
USDA, RURAL DEVELOPMENT	[CERTIFIED MAIL]
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Robert J. Karl, Esq.	
Margaret A. Malone, Esq.	
Brent A. Saunders, Esq.	
David E. Northrop, Esq.	
Nancy J. Miller, Esq.	
Mark E. Sheets, Esq.	

RULING ON MOTIONS
TO DISMISS AND FINAL ORDER

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CERTIFICATION

I hereby certify that the foregoing is a true and accurate copy of the RULING ON
MOTION TO DISMISS AND FINAL ORDER in JOHN E. DENNEY v. CHRISTOPHER
JONES, DIRECTOR, ET AL., Case No. ERAC 273870, 274715, 274716 and 274717 entered
into the Journal of the Commission this 28th day of June, 2001.


Mary J. Oxley, Executive Secretary

Dated this 28th day of
June, 2001, at Columbus, Ohio.



**Attorney General
Betty D. Montgomery**

TO: AAGS, AGO/EES

FROM: LAUREN C. ANGELL, AAG, AGO/EES

DATE: JULY 2, 2001

RE: New Decision For Your "Unauthorized Practice Of Law" and "Dismissal For Failure To Prosecute Appeal" Files

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1-sided copies -
can you redo

INTER-OFFICE COMMUNICATION

Attached is a new decision from ERAC discussing the unauthorized practice of law and dismissal for failure to prosecute appeal.

In this case a son attempted to represent his father, who suffered from Alzheimer's disease, before the ERAC via a properly executed "Power of Attorney". After the ERAC declared that this was improper, the Appellant father failed to make an appearance at the *de novo* hearing.

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