

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause)	DOCKET NO. 880240-TC
Proceedings against Commercial Ventures,)	
Inc. for failure to comply with)	ORDER NO. 24881
Commission rules.)	
<hr/>		ISSUED: 8-5-91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY

APPELLATE RULE 9.430 ORDER DENYING MOTION OF
COMMERCIAL VENTURES, INC. TO PROCEED AS AN INDIGENT

BY THE COMMISSION:

BACKGROUND

In Order No. 24197, March 5, 1991, we imposed a fine of \$7,000 on Commercial Ventures, Inc. (Commercial) for its willful failure to comply with our rules governing the provision of pay telephone service. Commercial holds Certificate of Public Convenience and Necessity No. 1006.

By its Notice filed March 25, 1991, Commercial appealed Order No. 24197 to the Florida Supreme Court. Subsequently, FPSC's Bureau of Records notified, by letter dated May 13, 1991, Commercial's attorney, Mr. Howard A. Rose (who also owns and operates Commercial) that charges for preparation of the record were due and payable. \$ 350.06(7) and \$ 28.24(4), Fla. Stat. No payment or partial payment of these charges has been received.

On July 9, 1991, Commercial's Motion to Proceed as Indigent was received wherein the appellant corporation seeks to proceed with appellate review without payment of costs, pursuant to Rule 9.430, Fla. R. App. P. That rule provides that we, as the lower tribunal, must approve or deny Commercial's Motion. Should we deny, the reasons for denial would be subject to review by the appellate court.

DISCUSSION

In our determination of whether Commercial should be declared an indigent for the purposes of Rule 9.430, Fla. R. App. P., we note first that there is no authority cited by movant that the attribute of indigency may apply to artificial persons, i.e., corporations, rather than natural persons, for the purposes of Rule 9.430.

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Moreover, a review of the case annotation of §57.081, F.S., which provides for indigents to proceed with appeals without payment of costs, indicates that in every such case, the indigent is a natural person, rather than an artificial person, i.e., corporation.

The filing of this Motion without any authority cited therefor and for the evident purpose of transferring more of the costs of this protracted and frivolous litigation to this agency and therefore the public,¹ at least tests the boundary of the Code of Ethics of the Florida Bar:

4-3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Though attorney Rose had notice in the comments to Rule 9.430, Fla. R. App. P., that

This rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs. The existence of such rights is a matter governed by substantive law. Committee Notes, 1977 Revisions. [Emphasis supplied] [,]

attorney Rose cited no authority whatever relating the substantive law of indigency to the relief sought, let alone a good faith argument for an extension, modification or reversal of existing law.

In view of the above, it is

ORDERED by the Florida Public Service Commission that Commercial Venture, Inc.'s Motion to Proceed As Indigent is denied.

¹ Our interim calculation of FPSC attorney time, exclusive of this appeal, devoted to responding to what former Commissioner Herndon termed attorney Rose's "paper work snowfall", Tr. 325, is 165 hours.

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By ORDER of the Florida Public Service Commission, this
5th day of August, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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Further review of this Order is subject to the provisions of
Rule 9.430, Fla. R. App. R.