

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12640

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 21, 2007

In the Matter of :
: NOTICE TO THE PARTIES
TERRENCE J. O'DONNELL :
:
:
:

I issued an Initial Decision and filed it with the Office of the Secretary yesterday. The Office of the Secretary then transmitted the Initial Decision by facsimile to the parties at 3:21 p.m. yesterday (Attachment to this Order). See Rule 360(c) of the Rules of Practice of the Securities and Exchange Commission (Commission).¹ Approximately two hours later, *i.e.*, after 5:00 p.m. on September 20, I received by facsimile a letter from Allan M. Lerner (Lerner), counsel for Respondent Terrence J. O'Donnell (O'Donnell).² In the letter, Lerner requests permission to withdraw as counsel for O'Donnell effective September 20, 2007.

Counsel may withdraw from representation without approval from an Administrative Law Judge. However, withdrawing counsel must still comply with the Commission's Rules of Practice before a withdrawal becomes effective.

Under Rule 102(d)(4) of the Commission's Rules of Practice, a notice of withdrawal must be filed at least five days before the proposed effective date of the withdrawal. Under Rule 160(a) of the Commission's Rules of Practice, intermediate Saturdays, Sundays, and holidays are excluded from a time computation when the period prescribed is seven days or less. Thus, a notice of withdrawal must be filed no less than five business days before its proposed effective date. Finally, under Rule 151(d) of the Commission's Rules of Practice, a notice of withdrawal, like any pleading, must be accompanied by a certificate of service. If the method of service used on opposing counsel differs from the method of filing with the Commission, the certificate must state why a different means of service was used. In this instance, Lerner did not provide a certificate of service with his withdrawal letter. It is impossible to tell if he transmitted his withdrawal letter to the Division of Enforcement by facsimile, or only by first class mail.

Until Lerner submits a revised notice of withdrawal that complies with the Commission's Rules of Practice, notice of Commission action that is provided to Lerner shall continue to


¹ The Office of the Secretary also mailed the Initial Decision to counsel for the parties on September 21, 2007.

² The facsimile trailer appearing at the top of Lerner's letter indicates that "Norma" transmitted the letter at 4:06 a.m. on September 21, 2007. The time and date are inaccurate.

constitute notice to O'Donnell. Lerner's prospective intent to withdraw does not invalidate the methods of serving the Initial Decision that have been used by the Office of the Secretary here.

Once an Initial Decision has been issued, any motions for extension of time must be addressed to the Commission, not an Administrative Law Judge. See Rule 161(a) of the Commission's Rules of Practice. If O'Donnell intends to seek an enlargement of time to file a motion to correct a manifest error of fact, he should be aware that the Commission has not previously granted such motions. See Rule 111(h) of the Commission's Rules of Practice ("Any motion to correct must be filed within ten days of the Initial Decision."); David Henry Disraeli, 90 SEC Docket 936 (Mar. 21, 2007).

To expedite the resolution of the proceeding, the Office of the Secretary is requested to send a copy of the Initial Decision to O'Donnell at 14201 Key Lime Blvd., Loxahatchee, Florida 33470, and to obtain proof of delivery.³



James A. Kelly
Administrative Law Judge

³ Lerner's letter provides an incorrect zip code for Loxahatchee, Florida.