

SUPREME COURT, STATE OF  
COLORADO  
2 E 14 Ave  
Denver, Colorado 80203

DATE FILED: December 27, 2017  
FILED IN THE  
SUPREME COURT

DEC 27 2017

OF THE STATE OF COLORADO  
Cheryl L. Stevens, Clerk

Appeal from the District Court  
Water Division 5  
Case No. 2016CW3059

J. TUCKER,

Opposer-Appellant,

vs.

THE TOWN OF MINTURN,

Applicant-Appellee,

DIVISION 5 ENGINEER,

Appellee Pursuant to C.A.R. 1(e).

J. Tucker  
P. O. Box 25181  
Arlington, VA 22202  
Telephone: (305) 238-5817  
Appellant, Pro Se

Case No. 2017 306

**NOTICE OF APPEAL**

## **I. TRIAL COURT INFORMATION**

TRIAL COURT: District Court, Water Division 5, State of Colorado

TRIAL COURT JUDGE: Honorable James Boyd

PARTY INITIATING APPEAL: J. Tucker

TRIAL COURT CASE NUMBER: 2016CW3059

## **II. DESCRIPTION OF CASE AND DISPOSITION IN TRIAL COURT**

### NATURE OF CASE:

The Town of Minturn filed an “Application for Finding of Reasonable Diligence” on July 29, 2016. J. Tucker, Trustee timely filed a “Statement of Opposition” on September 26, 2016. The Water Referee ordered J. Tucker to explain why he should be allowed to appear as an agent pursuant to Water Court Rule 1.

In an order dated August 4, 2017, the Water Referee ordered that Mr. Tucker not be allowed to appear as an agent under Rule 1. On August 28, 2017 the Water Referee denied the request for Reconsideration of referee’s Ruling. J. Tucker timely filed a “Protest of Referee’s Ruling” to the Water Court on September 11, 2017. The Water Court failed to issue a decision within 63 days.

This appeal timely followed.

- a. JUDGMENT BEING APPEALED: Order of Referee dated August 4, 2017. Order of Referee dated August 28, 2017. No-action denial of Protest of Referee’s Ruling dated November 14, 2017.
- b. WHETHER THE JUDGMENT ORDER RESOLVED ALL ISSUES BEFORE TRIAL COURT INCLUDING ATTORNEYS' FEES: No.
- c. WHETHER THE JUDGMENT WAS MADE FINAL FOR PURPOSES OF APPEAL PURSUANT TO C.R.C.P. 54(b): No.

- d. THE DATE THE JUDGMENT OR ORDER WAS ENTERED AND THE DATE OF MAILING TO COUNSEL: August 4, 2017. August 28, 2017
- e. WHETHER THERE WERE ANY EXTENSIONS GRANTED TO FILE ANY MOTIONS FOR POST-TRIAL RELIEF: No.
- f. WHETHER ANY MOTIONS FOR POST-TRIAL RELIEF WERE FILED: No.
- g. THE DATE POST-TRIAL RELIEF WAS DENIED OR DEEMED DENIED UNDER C.R.C.P. 59(j): November 14, 2017.
- h. WHETHER THERE HAS BEEN ANY EXTENSION GRANTED TO FILE NOTICES OF APPEAL: No.

### **III. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL**

- A. Whether the Water Court erred in denying the right of the corporate agent to appear pursuant to Water Court Rule 1 while the case was before the Referee?
- B. Whether the Referee erred in placing confidential in camera documents into the case file without notice to appellant nor opportunity for a hearing?

### **IV. TRANSCRIPT INFORMATION**

WHETHER A TRANSCRIPT OF EVIDENCE IS NECESSARY: Yes.

### **V. PREARGUMENT CONFERENCE**

WHETHER PRE-ARGUMENT CONFERENCE IS REQUESTED: No.

**VI. INFORMATION CONCERNING COUNSEL**

The names of counsel for the parties, their addresses, telephone numbers and registration numbers are as follows:

J. Tucker P. O. Box 25181 Arlington, VA 22202 (305) 238-5817  
Appellant

Meghan N. Winokur, #35973

600 E Main St #104

Aspen, Co 81611-1991

(970) 925-3476

Attorney for Town of Minturn/ Appellee

Lisa M. Thompson, #35923

1120 Lincoln St #1600

Denver, CO 80203

(303) 861-1963

Attorney for Battle Entities/ Opposers

Matthew Machado, #31233 P. O. Box 740 Edwards, CO 81631 (970) 328-6321

Attorney for Eagle County School District RE-50J/ Opposer

Division 5 Engineer, P O Box 396 Glenwood Springs, CO 81602 Appellee

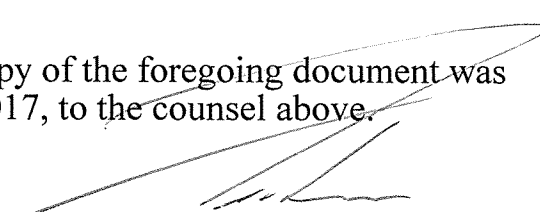
Kathy Powers, Water Clerk, 109 8<sup>th</sup> St #104 Glenwood Springs, CO 81601

**VII. APPENDIX**

A copy of the Referee's Order of August 4, 2017 and August 28, 2017.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was sent by U. S. Mail, this 20 day of December, 2017, to the counsel above.



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J. Tucker

P. O. Box 25181

Arlington, VA 22202

(305) 238-5817

Appellant

DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, Colorado 81601	DATE FILED: August 4, 2017
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF</b></p> <p><b>THE TOWN OF MINTURN</b></p> <p><b>In the Colorado River or its Tributaries</b></p> <p><b>In Eagle County, Colorado</b></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p style="text-align: center;"> <b>Case Nos.</b>  <b>16CW3059, 16CW3122,</b>  <b>16CW3123, 16CW3124, and</b>  <b>16CW3125</b> </p>
<p><b>ORDER REGARDING PRO SE REPRESENTATION BY J. TUCKER OF THE CORPORATE BENEFICIARIES OF THE OPPOSER J. TUCKER, TRUSTEE</b></p>	

**BACKGROUND**

J. Tucker, Trustee filed a Statement of Opposition in Case Nos. 16CW3059, 16CW3122, 16CW3123, 16CW3124, and 16CW3125. Each Statement of Opposition designates the J. Tucker, Trustee as the party opposing the application. Likewise, the verification for each Statement of Opposition was signed by J. Tucker, Trustee.

On June 16, 2017, the Court issued an order in Case No. 16CW3059 regarding Mr. Tucker's pro se representation of the opposer J. Tucker, Trustee ("Order"). In the Order, the Court found that Mr. Tucker was not permitted to represent J. Tucker, Trustee or J. Tucker Trust pro se. The Court ordered J. Tucker, Trustee to obtain counsel and have such counsel file an entry of appearance in this case on or before August 1, 2017.

The issue of Mr. Tucker's pro se representation of the J. Tucker, Trustee as an opposer also came up during a joint status conference held in Case Nos. 16CW3122, 16CW3123, 16CW3124, and 16CW3125 on June 27, 2017. During that status conference, the parties discussed the issue and the Court allowed Mr. Tucker to submit additional information regarding

the Trust for an in camera review by the Court. The Court received a letter from Mr. Tucker and additional information regarding the Trust and its corporate beneficiaries on July 21, 2017. The Court has reviewed the letter and additional information. The Court filed the documents submitted by Mr. Tucker in Case Nos. 16CW3059, 16CW3122, 16CW3123, 16CW3124, and 16CW3125 under seal, so no other party can view those documents without first obtaining a court order.

Mr. Tucker also requested that the Court correct the Minute Order Re: Status Conference on 6/27/17 in Case Nos. 16CW3122, 16CW3123, 16CW3124, and 16CW3125 to reflect that he is not an agent for the J. Tucker Trust and is not representing the J. Tucker, Trustee pro se. Mr. Tucker states that he is the agent for the corporate beneficiaries of the J. Tucker Trust and is representing those beneficiaries as a corporate agent in the cases before the water referee pursuant to Rule 1 of the Uniform Local Rules for All State Water Court Divisions (“Water Court Rules”).

### ISSUES

Mr. Tucker requests that the Court make several rulings. First, Mr. Tucker argues that he should be allowed to proceed under Water Court Rule 1 as a non-lawyer agent for the corporate beneficiaries of the J. Tucker Trust. Second, Mr. Tucker requests that the Court apply Rule 17(a) of the Colorado Rules of Civil Procedure and the Colorado Supreme Court’s decision in *Town of Minturn* to conclude that Mr. Tucker does not need to amend the Statement of Oppositions to identify the corporate beneficiaries of the Trust filed in the above-captioned cases.

### ANALYSIS

#### **A. Application of Water Court Rule 1.**

In relevant part, Water Court Rule 1 provides that

*A party that is a corporation may act through its corporate officers or other nonlawyer agents for the purpose of filing applications and statements of opposition when a case is before the referee.*

(emphasis added). According to the plain language of Rule 1, when an applicant or opposer is a corporation, corporate officers or other non-lawyer agents are permitted to represent a corporation in a case before the water referee. The clear and unambiguous language of Rule 1 states that the party in the case must be a corporation for the Rule to apply. Rule 1 does not reference any other type of entity. Nothing in Rule 1 authorizes a non-lawyer to represent any other type of entity in a proceeding before the water referee. Further, Rule 1 does not address a non-lawyer acting as the agent for the corporate beneficiaries of a trust.

Corporations and trusts are distinct types of entities that are governed by different sets of statutes. *Compare* Colo. Rev. Stat, title 7 (“Colorado Corporation Code”) *with* Colo. Rev. Stat., title 15 (“Probate, Trusts and Fiduciaries”). The role of a trustee is also distinct from that of a corporate agent or corporate officers. Restatement (Second) of Trusts § 170 (2017) (describing the duties of a trustee as administering “the trust solely in the interest of the beneficiary); Colo. Rev. Stat. § 7-108-401 (summarizing the standards of conduct for corporate officers as acting for the best interests of the corporation).

The Court agrees that Water Court Rule 1 allows a non-lawyer to represent a corporate party in cases before the water referee. Here, the Statement of Opposition filed in each case designates J. Tucker, Trustee as the party opposing the application in these actions. While there is evidence that the beneficiaries of the J. Tucker Trust are corporations, those corporations are not parties in these cases. The party here is the J. Tucker, Trustee, not the corporate beneficiaries. The fact that the beneficiaries of the J. Tucker Trust are corporations does not make the Trust a corporation or make the corporations parties to these cases. Even if the corporate beneficiaries did become parties to these cases, Mr. Tucker has not presented any information about whether he is a corporate officer or agent for those corporations.

Because Rule 1 only applies when a corporation is a party to the proceeding and the corporate beneficiaries of the J. Tucker Trust are not parties in these cases, the Court concludes that Water Court Rule 1 does not apply and does not permit Mr. Tucker to represent corporate beneficiaries of the J. Tucker Trust as their non-lawyer agent in these cases.

**B. Colorado Rule of Civil Procedure 17(a).**

Colorado Rule of Civil Procedure 17(a) provides that a “trustee of an express trust . . . may sue in his own name without joining with him the party for whose benefit the action is brought.” While Rule 17(a) authorizes an action to be brought in the name of the trust without identifying the beneficiaries of the trust, nothing in the rule authorizes a non-lawyer to represent a trust pro se. *See C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 698 (9th Cir. 1987). Rule 17(a) does not answer the question of whether a non-lawyer trustee can represent a trust or its beneficiaries.

Rule 17(a) does not require an action to name the corporate beneficiaries of a trust and Mr. Tucker is not required to name the corporate beneficiaries of the J. Tucker Trust in the Statements of Opposition. However, this conclusion does not mean that Mr. Tucker is permitted to represent the corporate beneficiaries in these proceedings.

**C. Representation of a Trust by a Non-Lawyer in a Case Before the Water Referee.**

In the *Town of Minturn*, the Colorado Supreme Court concluded that a trustee could not proceed pro se in his capacity as a trustee in a litigation matter. *J. Tucker, Trustee v. Town of*

*Minturn*, 359 P.3d 29 (Colo. 2015). In reaching this conclusion, the Court focused on case law that prohibits non-lawyers from representing others in court proceedings. *Id.* at 31-32. “The purpose of the bar and our admission requirements is to protect the public from incompetent legal advice and representation.” *Id.* at 31 (citing *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010)). While the *Town of Minturn* involved a case in front of the water judge, the same rationale applies to cases before the water referee, i.e., non-attorneys are “prohibited from undertaking activities that require the exercise of legal discretion of judgment on behalf of others.” *Id.* at 31.

The Court is not persuaded by Mr. Tucker’s argument that the *Town of Minturn* decision only applies to cases in front of the water judge. A water referee is a judicial officer with the authority to investigate facts, decide legal issues, and issue rulings. *See* Colo. Rev. Stat. § 37-92-303, 37-92-302(4). As explained above, nothing the Water Court Rules or Rules of Civil Procedure creates an exception for a non-lawyer to represent a trust in a proceeding before the water referee. Pro se representation of a trust results in a non-lawyer representing the interests of others, which amounts to the unauthorized practice of law. The unauthorized practice of law is not permissible in matters before the water referee.

**D. Minute Order Correction.**

Mr. Tucker also requests that the Court revise the Minute Order Re: Status Conference on 6/27/17 in Case Nos. 16CW3122, 16CW3123, 16CW3124, and 16CW3125. The Minute Order reflects that the Statement of Opposition in each case were filed by J. Tucker, Trustee as a pro se party. The Minute Order also reflects Mr. Tucker’s statements that he is acting as the agent for the corporate beneficiaries under Water Court Rule 1. As discussed above, the Court will not allow Mr. Tucker to proceed as a non-lawyer agent for the corporate beneficiaries of the J. Tucker Trust and finds that the Minute Order does not need to be revised.

**ORDERS**

The Court ORDERS as follows:

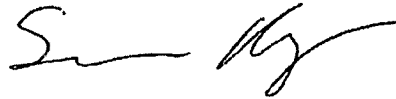
- (1) Mr. Tucker is not permitted to proceed as a non-lawyer agent of the corporate beneficiaries of the opposer, J. Tucker, Trustee pursuant to Water Court Rule 1;
- (2) Pursuant to Colorado Rule of Civil Procedure 17(a), Mr. Tucker is not required to amend the statements of opposition to list the corporate beneficiaries of the J. Tucker, Trustee;
- (3) Mr. Tucker cannot represent the J. Tucker, Trustee as a non-lawyer in these cases pending before the water referee;
- (4) If Mr. Tucker wishes to proceed with the opposition of J. Tucker, Trustee, he must obtain counsel and have such counsel file an entry of appearance in the above-captioned cases on or before October 1, 2017; and



(5) If no attorney licensed in the state of Colorado files an entry of appearance on behalf of J. Tucker Trustee or Trust by October 1, 2017, pursuant to Water Court Rule 6(p), the Court will enter an order dismissing J. Tucker, Trustee's Statements of Opposition filed in the above-captioned cases.

So Ordered August 4, 2017.

BY THE REFEREE

A handwritten signature in black ink, appearing to read 'Susan M. Ryan', written in a cursive style.

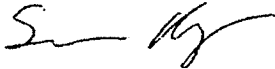
Susan M. Ryan, Water Referee  
Division 5, Water Court

DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: August 28, 2017
In the Interest of: MINTURN, TOWN OF	<b>△ COURT USE ONLY △</b>
	Case Number: 2016CW3059 Division: E                      Courtroom:
<b>Order Denying Request for Reconsideration of the Referee's Ruling</b>	

The Court has reviewed the Request for Reconsideration of Referee's Ruling filed by J. Tucker on August 22, 2017. The Court has considered the arguments in the Request for Reconsideration and finds that no new information has been raised or brought to the Court's attention. Therefore, the Court denies the Request for Reconsideration.

Any party may file a protest to the Referee's Ruling on this issue with the Water Judge within 21 days of the date that this Order denying reconsideration is mailed pursuant to section 37-92-304(2) of the Colorado Revised Statutes.

Issue Date: 8/28/2017



SUSAN MICHELLE RYAN  
Water Referee