

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3086/August 31, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16497

In the Matter of

R. SCOTT PEDEN, ESQ.

ORDER DENYING STAY REQUEST

The Securities and Exchange Commission issued an Order Instituting Administrative Proceedings and Imposing Temporary Suspension under Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice against Respondent R. Scott Peden, Esq., on April 16, 2015. The Commission's Order was based on a permanent injunction entered against Mr. Peden by the United States District Court for the Western District of Texas. On June 9, 2015, the Commission denied Mr. Peden's petition to lift the suspension and set the matter down for a hearing before an administrative law judge. In its Order, the Commission directed that an Initial Decision must be issued within 210 days of service of its June 9, 2015 Order.

I held a telephonic prehearing conference on June 24, 2015. During the conference, the parties proposed a schedule for motions for summary disposition. Under the parties' proposal, motions for summary disposition would be due September 14, 2015, and oppositions would be due October 14, 2015. Despite the lengthy delay involved, I adopted the parties' proposed schedule. *R. Scott Peden, Esq.*, Admin. Proc. Rulings Release No. 2858, 2015 SEC LEXIS 2587 (June 24, 2015).

On August 24, 2015, the parties filed a joint motion to stay or postpone this proceeding pending resolution of appeals Mr. Peden and the Commission have filed with the Court of Appeals for the Fifth Circuit. For the reasons that follow, the parties' motion is DENIED.

Extensions of time and postponements are governed by Commission Rule of Practice 161. *See* 17 C.F.R. § 201.161. Rule 161(b)(1) requires the Commission's administrative law judges to "adhere to a policy of strongly disfavoring" continuance requests. 17 C.F.R. § 201.161(b)(1). Rule 360 provides that the Commission will specify in the Order Instituting Proceeding (OIP) the deadline for issuance of an Initial Decision. 17 C.F.R. § 201.360(a)(2). That deadline may be either 120, 210, or 300 days from the date OIP is served. *Id.* Rules 161(b)(1) and 360 are designed to work together. *See* Rules of Practice, 68 Fed. Reg. 35,787, 35,787-88 (June 17, 2003).

In this case, the Commission ordered that the Initial Decision must be issued within 210 days of service of the June 9, 2015 Order. Because that Order was served on June 12, 2015, the Initial Decision in this matter must be issued by January 8, 2016.

The postponement the parties seek is indefinite in nature; they obviously cannot know when the court of appeals will rule on their appeals. The Rules of Practice, however, do not give me the authority to grant what amounts to an indefinite continuance to await the outcome of an appeal. Indeed, the Commission has often held that the fact an appeal is pending is not a basis to stay an administrative proceeding. See *James E. Franklin*, Securities Exchange Act of 1934 Release No. 56649, 2007 WL 2974200, at *4 n.15 (Oct. 12, 2007) (collecting cases), *pet. denied*, 285 Fed. App'x 761 (D.C. Cir. 2008); *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002) (relying on *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 n.15 (Sept. 17, 1992)).

The parties posit that I may rely on the authority in Rule 111, which grants me “the authority to do all things necessary and appropriate to discharge [my] duties.” 17 C.F.R. § 201.111; see Mot. at 5-7. Among my duties in this case is to issue an Initial Decision within 210 days. Granting an indefinite postponement would necessarily mean that the Initial Decision would be issued outside the 210-day period ordered by the Commission. I do not believe that Rule 111 was intended to permit an administrative law judge to avoid the Commission’s direction as to when an Initial Decision must be issued. In other words, I do not believe the “the authority to do all things necessary and appropriate to discharge [my] duties” includes the authority to avoid one of those duties.

The parties also suggest that Rule 161 permits me to indefinitely postpone this matter because doing so would be consistent with “the efficient administration of justice.” Mot. at 8. I do not doubt that awaiting the Fifth Circuit’s decision would be efficient. Neither Rule 161 nor any other Rule, however, provides for an indefinite continuance in this circumstance. The Rules instead only contemplate indefinite continuances when the parties have agreed on settlement terms and when prosecuting authorities request a stay pending a criminal investigation or prosecution. See 17 C.F.R. §§ 201.161(c)(2), .210(c)(3). And the fact Mr. Peden’s and the Commission’s appeals are pending is not a basis to stay this matter. See *James E. Franklin*, 2007 WL 2974200, at *4 n.15; *Joseph P. Galluzzi*, 2002 SEC LEXIS 3423 at *10 n.21.

As a final matter, the appeals filed with the Fifth Circuit were filed months before the prehearing conference in this matter. The parties were thus aware of the issues they now raise when they proposed that they be given over eighty days to prepare and file motions for summary disposition. Having proposed the schedule while knowing the appeals were pending, the parties should not now be permitted to seek relief from the schedule.

For the foregoing reasons, the parties’ joint motion to stay or postpone is DENIED.

James E. Grimes
Administrative Law Judge