

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	MB Docket No. 22-76
)	NAL/Acct. No. MB-202241410006
The Marion Education Exchange)	FRN: 0023109846
)	
For Renewal of License for)	Facility ID No. 193826
Station WWGH-LP)	File No. 0000115702
Marion, Ohio)	

ORDER REJECTING PROVISIONAL NOTICE OF APPEARANCE

Adopted: July 20, 2022

Released: July 20, 2022

1. The above-captioned hearing proceeding was initiated by the Media Bureau on February 23, 2022, based on inconsistent submissions by The Marion Education Exchange (MEE) regarding the composition of its Board of Directors, as well as failure to respond to Commission inquiries and an alleged unauthorized transfer of control.¹ Counsel for MEE filed a timely Notice of Appearance and represented MEE at the initial status conference in this proceeding, held on April 20, 2022.² On May 16, however, MEE’s counsel moved to withdraw from the proceeding based on his client’s lack of communication with him.³ That motion was granted on May 31, 2022, whereupon it was ordered that a legal representative of MEE file a Notice of Appearance within 20 days.⁴ After sending separate *ex parte* letters to the FCC’s Chairwoman and the Presiding Judge asking that the Commission provide MEE with legal counsel, Shawn Craft, President of MEE’s Board of Directors, filed a Notice of Appearance on June 18, stating that MEE will appear at the hearing and provide evidence.⁵ Because MEE is a corporate entity, however, the Commission’s rules do not permit an officer or employee to represent a corporation in a hearing proceeding without the approval of the Presiding Judge.⁶ On June 24, 2022, the Presiding Judge afforded MEE additional time to retain counsel and ordered that its new attorney was to file a Notice of Appearance within 20 days.⁷

2. On the final day for filing the required Notice of Appearance, Attorney Charles R. Naftalin of Holland & Knight, LLP, submitted a pleading captioned “Provisional Notice of Appearance of

¹ *The Marion Education Exchange*, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture, MB Docket No. 22-76, DA 22-187 (MB Feb. 23, 2022).

² *The Marion Education Exchange*, Order Summarizing Initial Conference, MB Docket No. 22-76, FCC 22M-11 (ALJ Apr. 21, 2022) (*Order Summarizing Initial Conference*); George M. Wolfe, *The Marion Education Exchange*, Notice of Appearance and Discovery Request, MB Docket No. 22-76 (filed Mar. 12, 2022).

³ Motion of George M. Wolfe to Withdraw as Counsel, MB Docket No. 22-76 (filed May 16, 2022).

⁴ *The Marion Education Exchange*, Order, MB Docket No. 22-76, FCC 22M-17 (ALJ May 31, 2022) (*May 31 Order*).

⁵ Shawn Craft, *The Marion Education Exchange*, Notice of Appearance, MB Docket No. 22-76 (filed June 18, 2022).

⁶ 47 CFR § 1.21(d).

⁷ *The Marion Education Exchange*, Order, MB Docket No. 22-76, FCC 22M-20 (ALJ June 24, 2022) (*June 24 Order*).

Counsel” and an accompanying motion in support.⁸ Mr. Naftalin states that he was first contacted by MEE on July 11, three days before the appearance was due. He argues that “[the] record of this case is far too extensive for Naftalin to understand it in a matter of hours and to make determinations of whether, or not, to represent MEE, and if so, how best to represent MEE.”⁹ He asks that “all activities in this proceeding, including discovery, be tolled to and through September 30, 2022,” and that he be afforded “the unilateral right, through the same period of time, to withdraw from this proceeding upon submission of a statement to that effect.”¹⁰ The next day, July 15, 2022, the Enforcement Bureau submitted an opposition to Attorney Naftalin’s Provisional Notice of Appearance and supporting motion.¹¹ The Bureau contends that because the Provisional Notice does not comply with either the Commission’s rules or the Presiding Judge’s *June 24 Order*, it should not be accepted as a valid appearance and this proceeding should be dismissed. The Bureau points out that the applicable Commission rule, 47 CFR § 1.221(c), provides that a Notice of Appearance must aver that the party will present evidence on the matters designated for hearing and that it will appear before the presiding officer. It submits that Mr. Naftalin has made neither assertion.¹² If the Presiding Judge does afford MEE additional time to submit a valid appearance, the Bureau argues, the record of this proceeding is not so extensive or complicated as to justify a delay of two months.¹³

3. The Presiding Judge has significant latitude in controlling the course of a hearing proceeding. Recognizing that MEE is a nonprofit organization operating a low-power FM station, she has on several occasions afforded MEE concessions that she would not be inclined to provide a more sophisticated licensee. She excused its failure to file a proposed hearing schedule as ordered by the Presiding Judge, and to respond to the Enforcement Bureau’s Request for Admissions by the original deadline.¹⁴ She ordered MEE’s first attorney, as a condition of his withdrawal, to immediately notify MEE of its filing obligations and to submit a statement in the record confirming that he had done so.¹⁵ She accepted for filing an *ex parte* communication sent to her and to the Chairwoman of the FCC that was not only in violation of the Commission’s rules but exceedingly inappropriate.¹⁶

4. The Presiding Judge has also provided MEE more than twice as much time to retain new counsel as the Commission’s rules require. When a matter is designated for hearing, a party is afforded 20 days to file a Notice of Appearance. If no notice is filed, section 1.221(c) provides that the matter is to be dismissed. MEE was put on notice on May 31, at the latest, that it needed to find new counsel, and the Presiding Judge ordered that “[a] legal representative of MEE shall file a Notice of Appearance in this proceeding pursuant to section 1.221(c) of the Commission’s rules” within 20 days.¹⁷ By “legal representative,” the Presiding Judge meant an attorney. When MEE filed a new appearance indicating that it was representing itself, the Presiding Judge, realizing that her order had been misinterpreted, issued

⁸ Charles R. Naftalin, Provisional Notice of Appearance of Counsel, MB Docket No. 22-76 (filed July 14, 2022); Charles R. Naftalin, Motion in Support of Provisional Appearance of Counsel, MB Docket No. 22-76, (filed July 14, 2022) (Naftalin Motion).

⁹ Naftalin Motion at 1.

¹⁰ *Id.* at 2.

¹¹ Enforcement Bureau’s Opposition to Provisional Notice of Appearance and The Marion Education Exchange’s Motion in Support Thereof, MB Docket No. 22-76 (filed July 15, 2022) (EB Opposition to Naftalin Motion).

¹² *Id.* at 2-3.

¹³ *Id.* at 4-5.

¹⁴ *Order Summarizing Initial Conference* at para. 3.

¹⁵ *May 31 Order* at para. 4.

¹⁶ *June 24 Order* at para. 6.

¹⁷ *May 31 Order* at para. 2.

a more specific directive in the *June 24 Order* that restarted the 20-day period.¹⁸ At the same time, the Presiding Judge tolled discovery in this proceeding to ensure that MEE would not have to respond to additional requests without the benefit of counsel.¹⁹

5. The Presiding Judge took all of these actions in spite of the fact that MEE bears the burden of proof in this proceeding. MEE seeks renewal of its license, but continues to show very limited understanding of the responsibilities inherent in being an FCC licensee. Mr. Naftalin acknowledges that his Provisional Appearance is “very unusual – possibly unique.”²⁰ That is not in doubt. What Mr. Naftalin and MEE ask is that this proceeding be delayed by two months so he can ponder whether to take the case or exercise his “unilateral right” to withdraw. Mr. Naftalin posits that the proposed delay would serve the public interest in fair proceedings by providing MEE the opportunity to receive the advice of experienced FCC legal counsel. On the contrary, the proposed suspension of this proceeding may serve MEE, but it does not serve the public interest. MEE’s renewal application has been pending for more than two years. This case is not complicated, nor is the record extensive. The Presiding Judge summarized the facts in the first paragraph of the *June 24 Order*, and to date only a handful of substantive materials have been filed, limited to admissions and the initial document requests and interrogatories. Discovery is currently tolled. As the Presiding Judge indicated in the *June 24 Order*, MEE’s repeated failures to adhere to deadlines in this matter are sufficient justification for dismissal of this proceeding.²¹ Nonetheless, given that dismissal will cause MEE to lose its FCC license, and seeing that MEE appears to finally grasp the seriousness of this matter, the Presiding Judge will grant a limited delay to allow for filing of a valid appearance by counsel. The Enforcement Bureau suggests that 10 days should be enough time to allow Mr. Naftalin to review the record and make a decision whether to represent MEE.²² The Presiding Judge believes that seven days is sufficient. Accordingly, within seven calendar days of the release date of this Order, an attorney representing MEE is to file a Notice of Appearance in this proceeding that conforms to section 1.221(c) of the Commission’s rules. If a valid notice is not filed, it is the Presiding Judge’s intention to dismiss this matter for failure to prosecute.²³

6. Accordingly **IT IS ORDERED** that the Marion Education Exchange **SHALL RETAIN** an attorney authorized to practice before the Commission to represent it and **SHALL CAUSE** that attorney to file a Notice of Appearance in this proceeding pursuant to section 1.221(c) of the Commission’s rules, 47 CFR § 1.221(c), **WITHIN SEVEN CALENDAR DAYS** of the release date of this order.

7. **IT IS FURTHER ORDERED** that the Motion in Support of Provisional Notice of Appearance of Counsel, filed by Attorney Charles R. Naftalin on behalf of The Marion Education Exchange on July 14, 2022, **IS DENIED**.

8. **IT IS FURTHER ORDERED** that the Provisional Notice of Appearance of Counsel filed by Attorney Charles R. Naftalin on July 14, 2022, **IS REJECTED**.

¹⁸ *June 24 Order* at para. 11.

¹⁹ *Id.* at para. 12.

²⁰ Naftalin Motion at 2.

²¹ *June 24 Order* at para. 10.


²² EB Opposition to Naftalin Motion at 5.

²³ Discovery remains tolled, to resume on the date a valid Notice of Appearance is filed. The due date for motions to compel more complete responses with respect to discovery that has already been submitted in this proceeding will be calculated beginning on that date. See Enforcement Bureau’s Motion to Preserve Right to File Motions to Compel Complete Discovery Responses, MB Docket No. 22-76 (filed June 27, 2022).

9. **IT IS FURTHER ORDERED** that discovery in this proceeding **REMAINS TOLLED** until the required Notice of Appearance referenced above is filed; applicable filing deadlines shall be counted from the day that filing is submitted.

10. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Motion to Preserve Right to File Motions to Compel Complete Discovery Responses, filed on June 27, 2022, **IS DISMISSED AS MOOT.**

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge