

Respondent's hearing request.⁴ However, despite these discussions the parties were unable reach a resolution, and thus, Staff requested that a Prehearing Conference be scheduled.⁵

3. On August 22, 2019, the Commission issued an *Order Designating Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for September 24, 2019.⁶ The Order stated: "Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under KAPA" (i.e., the Kansas Administrative Procedure Act).⁷ The Prehearing Conference was held as scheduled. Staff appeared at the Conference, but the Respondent did not. Staff made a verbal motion for default.

4. On September 26, 2019, Staff filed a Motion for Default Judgment, asking the Commission to find the Respondent in default, to dismiss the Respondent's request for hearing, to affirm the violations and civil penalties assessed against the Respondent, and to close the docket.⁸

5. K.S.A. 77-520(a) provides that if a party fails to attend any stage of an adjudicative proceeding, the agency may issue a default order with a statement of the grounds. Subsection (b) states that within seven days after service of a proposed default order, the party against whom it was issued has seven days to file a written motion to vacate, which shall state the grounds relied upon. Subsection (c) states: "The proposed default order shall become effective after expiration of the time within which the party may file a written motion under subsection (b) unless a written motion to vacate the order is filed with the agency within such time."

6. In accordance with the Commission's August 22, 2019 *Order Designating Prehearing Officer and Setting Prehearing Conference* and K.S.A. 77-520, the Commission finds the Respondent's failure to attend the Prehearing Conference constitutes default. Thus, the Commission

⁴ See Staff's Motion to Set Prehearing Conference, ¶ 5 (July 17, 2019).

⁵ *Id.* at ¶¶ 5-6.

⁶ *Order Designating Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (Aug. 22, 2019).

⁷ *Id.* at Ordering Clause D.

⁸ Staff's Motion for Default Judgment, ¶ 10 (Sept. 26, 2019).

grants Staff's Motion for Default Judgment, except that the Commission will not close the docket at this time.

THEREFORE, THE COMMISSION ORDERS:

1. Staff's Motion for Default Judgment is granted, except the docket shall not be closed at this time.

2. In accordance with K.S.A. 77-520(b), any party may file a written motion requesting that this Default Order be vacated and stating the grounds relied upon, within seven calendar days after service of this Order, with three additional days added to account for service. If no motion to vacate this Order is filed within the stated time period, this Order shall become effective.

3. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering additional orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 10/03/2019



Lynn M. Retz
Executive Director

MJD

CERTIFICATE OF SERVICE

19-GIMM-406-KHP

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 10/03/2019.

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/S/ DeeAnn Shupe

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