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AGENDA

- A. A. Call to Order of a Special Arizona Racing Commission Meeting of June 28, 2016 for the Hearing of the Jeremy E. Simms' Appeal to the Arizona Racing Commission of the Director's Ruling to Grant a Racing License to Ronald A. Simms, Case No. 14A-020-RAC at 9:01 AM**

Commissioners Present:

Chair Rory Goreé
Vice Chair William "Bill" Feldmeier
Commissioner Tom Lawless
Commissioner David Heiple
Commissioner Jay McClintock

Also present:

Camila Alarcon, Esq.
Chris Hering, Esq.
Cassie Goodwin, Commission Secretary
Sheri Koss, Hearings Coordinator

Jeremy E. Simms' Appeal to the Arizona Racing Commission of the Director's Ruling to Grant a Racing License to Ronald A. Simms, Case No. 14A-020-RAC. The Commission may vote to go into Executive Session under A.R.S. § 38-431.03(A)(3) in order to receive legal advice, consider its position, and instruct its attorneys regarding the Commission's position.

Commissioner Lawless moved to go into executive session for legal advice. Vice Chair Feldmeier second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

Open Session recessed at 9:05 AM.
Open Session reconvened at 9:30 AM.

The Commission made the following decisions on outstanding motions relating to this matter:

1. Jerry Simms's Motion for Administrative Notice, filed June 21, 2016. Jerry Simms seeks administrative notice of an oral argument transcript from the civil litigation dated 9/24/13.

Vice Chair Feldmeier moved to deny the Motion for Administrative Notice filed by Jerry Simms on June 21, 2016. Commissioner Lawless second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock)

2. Ron Simms's Motion to Strike References Outside the Record in Jerry's Reply Brief, filed June 14, 2016. Ron Simms seeks to strike the 9/24/13 oral argument transcript that is the subject of Jerry's motion for administrative notice.

Commissioner McClintock moved to approve the Motion to Strike References Outside the Records filed by Ron Simms on June 14, 2016. Commissioner Heiple second. Motion carried. (Ayes: Goreé, Lawless, Heiple, McClintock. Nays: Feldmeier.)

3. Ron Simms's Motion to Strike References Outside the Record in Jerry's Notice of Appeal and Jerry's Opening Reply Brief, filed May 6, 2016. Ron Simms seeks to strike materials outside the OAH record and materials from record before OAH but that ADOR did not rely upon or identify as support for the Notice of Denial.

Commissioner McClintock moved to deny the Motion to Strike References Outside the Record filed by Ron Simms on May 6, 2016. Vice Chair Feldmeier second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

4. Ron Simms's Motion to Strike Jerry Simms's Personal Letter to the Commissioners, filed May 6, 2016. Ron Simms seeks to exclude the letter from Jerry to the Commissioners that was submitted on August 21, 2015.

Commissioner McClintock moved to deny the Motion to exclude Jerry Simms's personal letter to the Commissioners filed by Ron Simms on May 6, 2016. Commissioner Lawless second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

5. Ron Simms's Amended Motion to Dismiss Appeal for Lack of Jurisdiction and Lack of Standing, filed April 8, 2016. This motion renews Ron's arguments that the Commission lacks jurisdiction and standing to hear the appeal.

Vice Chair Feldmeier moved to deny the Motion to exclude Jerry Simms's personal letter to the Commissioners filed by Ron Simms on May 6, 2016. Commissioner Lawless second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

6. Ron Simms's Amended Motions to Dismiss for Violations of Fair and Due Process and Request for Recusal filed March 31, 2016. This document has five separate motions. The Commission has already denied Ron's motion to disqualify Commissioners McClintock and Lawless and Ron's motion to disqualify the entire Commission for institutional bias. The remaining three motions argue Ron has been denied due process because of (a) the Commission's "failure" to adopt rules and follow its own rules, (b) the Commission's unlawful reliance upon material outside the record on appeal in making rulings, and (c) ex parte communications between Jerry Simms and the Commissioners.

(a) Vice Chair Feldmeier moved to deny the Amended Motions to Dismiss for Violations of Fair and Due Process and Request a Recusal regarding the Commission's "failure" to adopt rules and follow

its own rules filed by Ron Simms on March 31, 2016. Commissioner Lawless second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

(b) Commissioner McClintock moved to deny the Amended Motions to Dismiss for Violations of Fair and Due Process and Request a Recusal regarding the Commission's unlawful reliance upon material outside the record on appeal in making rulings filed by Ron Simms on March 31, 2016. Commissioner Lawless second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

(c) Commissioner Heiple moved to deny the Amended Motions to Dismiss for Violations of Fair and Due Process and Request a Recusal regarding alleged ex parte communications between Jerry Simms and the Commissioners filed by Ron Simms on March 31, 2016. Commissioner McClintock second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

Attorney Michael Manning, Jerry Simms's counsel addressed the Commission and presented 46 minutes of his oral argument. He reserved the remaining 14 minutes for rebuttal. Commissioners asked various questions regarding information presented.

Chair Goreé requested a brief recess before hearing from Ronald Simms's counsel.

**Open Session recessed at 10:43 AM.
Open Session reconvened at 10:53 AM.**

Attorney Stacy Harrison, Ronald Simms's counsel, addressed the Commission and presented 60 minutes of oral argument. Commissioners asked various questions regarding the information presented.

Chair Goreé requested a brief recess before hearing from Ronald Simms's counsel.

**Open Session recessed at 12:05 PM.
Open Session reconvened at 12:15 PM.**

Attorney Michael Manning addressed the Commission, using his remaining 14 minutes for rebuttal.

The commissioners asked various questions of both counsels, seeking clarification of questions raised during their presentations.

Commissioner Heiple moved to go into executive session for legal advice. Commissioner Lawless second. Motion carried. (Ayes: Goreé, Feldmeier, Lawless, Heiple, McClintock.)

**Open Session recessed at 12:50 PM.
Open Session reconvened at 1:51 PM.**

Chair Goreé took note of the time and polled the parties about finishing the hearing today. Ms. Harrison indicated her party didn't have room reservations if the matter went until 5:00 PM. Chair Goreé decided to try and get through the Administrative Law Judge's Decision and recess the hearing. Staff would contact the parties regarding calendars to schedule the continuation.

The Commission reviewed the Administrative Law Judge M. Douglas's Decision in this matter. Going through each Findings of Fact, the Commissioners accepted the following paragraphs: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, and 56.

The Commissioners determined they wanted to further review and consider the following paragraphs: 12, 18, 19, 21, 22, 27, and 52.

The Commission reviewed the Administrative Law Judge M. Douglas's Decision in this matter. Going through each Conclusions of Law, the Commissioners accepted the following paragraphs: 1 and 2.

The Commissioners determined they wanted to further review and consider the following paragraphs: 3, 4, 5, 6, 7, 8, 9, and 10.

Adjournment at 3:28 PM.