

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2002-017

FINAL AGENCY DECISION DISMISSING APPEAL

**IN THE MATTER OF THE COMPLAINT FILED BY RICHARD J. BOWLES REGARDING
ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT ON THE PART
OF TELLER COUNTY COMMISSIONERS JERRY BERGEMAN, CLARKE BECKER,
AND LUCILE FEHN, TELLER COUNTY ADMINISTRATOR GREG WINKLER, ET AL.**

This matter comes before the Administrative Law Judge on Complainant's Appeal of Rulings of Administrative Law Judge, which the ALJ deems a Motion for Reconsideration, and Teller County Respondents' Response thereto; and on Teller County Respondents' Motion for Sanctions of the Teller County Respondents and Complainant's Response thereto.

The ALJ, having considered the relevant pleadings and being fully advised in the premises, HEREBY FINDS AND ORDERS AS FOLLOWS:

1. That Complainant's Appeal of Rulings of Administrative Law Judge is deemed a Motion for Reconsideration of the ALJ's Orders dated June 3, 2003, and is denied.
2. That Complainant failed to respond to Respondents' discovery requests, and that Respondents therefore filed their Motion to Compel.
3. That on June 3, 2003, the undersigned ALJ ordered Complainant to respond to the Teller County Respondents' discovery requests within ten (10) days of the date of the ALJ's Order. Complainant has failed to comply with this Order.
4. The arguments presented in Complainant's Response to Respondents' Motion for Sanctions are without merit.
5. The ALJ is authorized pursuant to the provisions of C.R.C.P. 37(b)(2)(C) to enter an order dismissing an action where a party fails to obey an order to provide discovery. *Lewis v. J.C. Penney Company, Inc.*, 841 P.2d 385 (Colo. App. 1992). Here, the ALJ finds that Complainant has willfully disobeyed the ALJ's Order, and has provided

no excuse nor justification therefore. Complainant's failure to comply with the ALJ's Order, while simultaneously filing an "appeal" of the same is indication that Complainant is willing only to pursue his own claim, but is not willing to participate in the process of pre-trial discovery.

6. Accordingly, this matter is dismissed with prejudice.

DONE AND SIGNED this _____ day of September, 2003.

Kathleen T. Muramoto,
Administrative Law Judge

This Agency Decision is a final decision of the Secretary of State and is subject to review by the Court of Appeals, pursuant to Section 24-4-106(11), C.R.S. Section 1-45-111(2)(a), C.R.S.1

1 Section 1-45-11(2)(a), C.R.S. has been repealed, but the new section only applies to elections after December 6, 2002, so is inapplicable here. In any case, the appeal procedures remain the same under the new law.

Certificate of Mailing

I hereby certify I have deposited in the U.S. Mail, postage prepaid at Denver, Colorado, true and correct copies of the above **Final Agency Decision Dismissing Appeal** this _____ day of _____, 2003, addressed as follows:

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