

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

In the Matter of
HISPANIC CHRISTIAN COMMUNITY NETWORK, INC., aka HCCN
ANTONIO CESAR GUEL
Former President of HCCN
and
JENNIFER JUAREZ, aka Jenifer Juarez,
Licensee of Low Power Television Stations
Application for Renewal
KHDE-LD, Denver, CO
KJTN-LP, Abilene, TX
KZAB-LP, Abilene, TX
KZTE-LD, Fulton, AR
KTEQ-LP, Fulton, AR
WESL-LP, Jamestown, KY
KRPO-LD, Quartzite, AZ
MB Docket No. 23-267
NAL/Acct. No. 202341420025
FRNS: 0014120505; 0013410998
NAL/Acct. No. 202341420026
FRNS: 0006568448; 0023037682
NAL/Acct. No. 202341420027
FRN: 0024126237
Facility ID No. 189604
LMS File No. 0000176579
Facility ID No. 127351
CDBS File No. BRTTL-20160411AAZ and
LMS File No. 0000192978
Facility ID No. 130088
CDBS File No. BRTTL-20160412ABN and
LMS File No. 0000192977
Facility ID No. 128037
LMS File No. 0000132447
Facility ID No. 130047
LMS File No. 0000132448
Facility ID No. 128034
LMS File No. 0000142902
Facility ID No. 128964
LMS File No. 0000192826

SUMMARY OF STATUS CONFERENCE AND ORDER

Issued: September 12, 2024

Released: September 12, 2024

Appearances: Dan J. Alpert, Esq., on behalf of Antonio Cesar Guel; Pamela S. Kane, Esq., and Michael Engel, Esq., on behalf of the Enforcement Bureau, Federal Communications Commission

- 1. A status conference in the above-captioned proceeding was held on August 14, 2024, at

Commission headquarters. As described by the Presiding Judge in her Order of August 9, 2024, the reason for the conference was to assess the potential conflicts of interest that could arise now that counsel for Antonio Cesar Guel, Dan J. Alpert, has indicated that he will also be representing Jennifer Juarez and Maria Guel in connection with their upcoming depositions in this proceeding.¹ Discovery was originally scheduled to conclude on July 30, 2024, but was suspended pending resolution of this issue.²

2. Concerns over Mr. Alpert simultaneously representing Mr. Guel and members of his family were first raised by the Presiding Judge during the initial status conference in this proceeding, held on September 27, 2023.³ In her summary of that initial status conference, she stated as follows:

[D]epending on how this matter proceeds, conflicts of interest may arise between Mr. Guel, who is represented by Mr. Alpert in this proceeding, and other clients of Mr. Alpert, particularly Ms. Juarez, and could extend to other relatives of Mr. Guel if they are also clients of Mr. Alpert. Resolution of any client conflicts is primarily Mr. Alpert's duty, but the Presiding Judge raises the issue at this early stage of the proceeding to forestall any potential future delay that conflict issues might cause. She also notes that she has both the authority and the obligation to ensure that the hearing is conducted fairly.⁴

3. Just before depositions of Mr. Guel, Ms. Juarez, and Ms. Guel were to commence, Mr. Alpert notified the Enforcement Bureau that he would be representing all three parties at those depositions. Ms. Juarez, who is Mr. Guel's niece, is a named party to this proceeding; because she waived her right to a hearing, the Presiding Judge certified designated issues specific to her for resolution by the Commission.⁵ She and Maria Guel, who is Mr. Guel's daughter, were subpoenaed to appear for depositions regarding those issues relative to Mr. Guel that were not certified to the Commission. The Enforcement Bureau filed an Emergency Motion for Status Conference on July 22, 2024, arguing that Ms. Juarez and Ms. Guel are potentially adverse witnesses to Mr. Guel and, as such, "there would be no way to know during the depositions whether Mr. Alpert would be motivated to object to, or would refrain from objecting to, questions that might benefit one client, but harm the interests of another."⁶ Further, EB points out that Ms. Juarez remains subject to potential enforcement in this case.⁷

4. Mr. Alpert, on Mr. Guel's behalf, responded on July 26, 2024, that his proposed

¹ *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Order Scheduling Status Conference, MB Docket No. 23-267, FCC 24M-07, 2024 WL 3755129 (ALJ August 9, 2024) (*Order Scheduling August 14 Conference*).

² *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Order, MB Docket No. 23-267, FCC 24M-06, 2024 WL 3533198 (ALJ July 23, 2024).

³ *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Summary of Initial Conference, MB Docket No. 23-267, FCC 23M-12, 2023 WL 6458476 (ALJ Oct. 2, 2023) (*Summary of Initial Conference*).

⁴ *Id.* at para. 9. See also Transcript of Initial Status Conference, Tr. 14:18-15:23 (Sept. 27, 2023) (discussion of possibility that witnesses may need to retain alternate counsel due to conflicts of interest).

⁵ *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Certification Order, MB Docket No. 23-267, FCC 23M-13, 2023 WL 6793901 (ALJ Oct. 10, 2023) (*Juarez Certification Order*).

⁶ Enforcement Bureau's Emergency Motion for Status Conference, MB Docket No. 23-267 (filed July 22, 2024) at para. 5.

⁷ *Id.* at para. 6

representation does not pose a conflict of interest.⁸ He submits that Ms. Juarez is not a party because she waived her right to participate in this hearing, and notes that Maria Guel has never been a party. In that sense, he contends, he will not be representing two parties seeking conflicting outcomes in the case. Mr. Alpert also submits that he has been assisting Ms. Juarez and Ms. Guel throughout discovery, and that his review of the information submitted thus far evidences no conflict between the submissions of the three deponents.⁹ Moreover, he contends, Mr. Guel has conceded most of the alleged facts, making a conflict unlikely. Mr. Alpert further notes that he is a member of the Virginia bar and not the District of Columbia bar, and that he received informal advice from a representative of the Virginia bar that his representation of all three individuals at their depositions is not prohibited.¹⁰

5. The Enforcement Bureau sought and was granted leave to file a Reply.¹¹ The Bureau's Reply, filed on July 30, argues that because Ms. Juarez is both a witness in this hearing and remains subject to enforcement in this docket, there is significant potential for her to provide testimony against the interests of Mr. Guel and for him to provide testimony against her interests.¹² Further, the Bureau indicates that Maria Guel has produced documents in response to discovery requests that raise issues adverse to both Mr. Guel and Ms. Juarez.¹³ As a result, the Bureau argues, Mr. Alpert cannot represent all three deponents without running afoul of conflict restrictions imposed by standards of legal professional responsibility. It also submits that Mr. Alpert has not provided emails or other evidence indicating what advice he received from the Virginia bar representative with whom he raised these potential conflicts, nor did he provide evidence of informed consent from the deponents.¹⁴

6. The parties and the Presiding Judge discussed these matters in greater detail at the status conference held on August 14, 2024. Both the Virginia Bar and the District of Columbia Bar follow Rule 8.5 of the American Bar Association's Model Rules of Professional Conduct, which provides that when assessing an attorney's conduct in connection with a matter before a tribunal, the controlling bar rules are those of where the tribunal sits.¹⁵ Accordingly, District of Columbia Bar rules apply to this hearing. District of Columbia Bar Rule 1.7(a) provides that an attorney may not represent adverse positions in the same matter. Rule 1.7(b) bars an attorney from representing the interests of a client when another client, even though represented by different counsel in the matter, has an interest adverse to that advanced by the attorney.¹⁶ The prohibition of Rule 1.7(b) is waivable with the informed consent of all involved clients; the prohibition of Rule 1.7(a) is not waivable.¹⁷

7. During the status conference, the Presiding Judge raised the possibility of accepting the

⁸ Antonio Cesar Guel, Response to Emergency Motion, MB Docket No. 23-267 (filed July 26, 2024).

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Order Scheduling August 14 Conference* at para. 5.

¹² Enforcement Bureau's Reply, MB Docket No. 23-267 (filed July 30, 2024) at para. 2.

¹³ *Id.* at para. 3.

¹⁴ *Id.* at para. 5.

¹⁵ D.C. Rules of Professional Conduct, Rule 8.5; VA Rules of Professional Conduct, Rule 8.5; ABA Model Rules of Professional Conduct, Rule 8.5.

¹⁶ D.C. Rules of Professional Conduct, Rule 1.7, Comment 1 ("The difference between Rule 1.7(a) and Rule 1.7(b) is that in the former, the lawyer is representing multiple interests in the same matter, while in the latter, the lawyer is representing a single interest, but a client of the lawyer who is represented by different counsel has an interest adverse to that advanced by the lawyer").

¹⁷ *Id.* at Comment 2.

deponents' informed consent to mutual representation, and Mr. Alpert provided statements of informed consent from Mr. Guel, Ms. Juarez, and Ms. Guel on August 25, 2024.¹⁸ Further study, however, indicates that the representation proposed here may fall under Rule 1.7(a) rather than 1.7(b), which would mean that eliciting inconsistent testimony could still be considered an unwaivable and actionable conflict despite deponents' amenability to joint representation.¹⁹ In any event, Mr. Alpert reiterated his argument during the status conference that there is no inherent conflict in representing all three deponents because they are in agreement on the designated issues. In particular, he indicated that Mr. Guel and Ms. Juarez concede that Mr. Guel was the real party in interest with respect to the stations that are the subject of this proceeding, which were nominally licensed to Ms. Juarez.²⁰ In addition to the immediate concern of conflicts arising during the upcoming depositions, the Enforcement Bureau submitted that Ms. Juarez told its counsel that she had never spoken to Mr. Alpert, despite him filing Commission documents on her behalf for several years, and that she stated that she does not know what this proceeding is about. The Bureau also alleged that the signatures on documents that Mr. Alpert filed on her behalf appear to be photocopied.²¹ Mr. Alpert responded that his communications with Ms. Juarez were via email, as there is very limited legal representation required with respect to FM translator or low-power TV stations.²² He also averred that Ms. Juarez affirmatively chose to waive participation in this hearing and that she understands that she nonetheless faces potential liability in this docket.²³

8. Mr. Alpert correctly observes that the real party in interest issue is a central consideration in this hearing, but resolution of that question does not necessarily settle the other outstanding designated issues. Nor does deponents' purported agreement on that one issue predict that they will provide consistent testimony regarding facts material to that issue, or on other issues. It must be remembered, in this regard, that the Presiding Judge previously denied Mr. Guel's request for summary decision because it failed to satisfy the applicable legal standard, i.e., it did not demonstrate that no genuine question of material fact exists and rested on "mere allegations and denials."²⁴ Nothing in the record of this proceeding supports a conclusion that all the material facts are known, or that there is likely to be no variance in testimony of witnesses as to the facts, even regarding matters admitted by Mr. Guel. On the contrary, this case thus far has revealed a number of admitted or alleged inconsistencies, obfuscations, and falsehoods involving all three deponents. The order initiating this hearing alleged several instances of misrepresentation or lack of candor in Mr. Guel's statements to Media Bureau investigators, as well as inconsistency between statements of Jennifer Juarez and certifications made by Maria Guel.²⁵ And Mr.

¹⁸ Antonio Cesar Guel, Jennifer Juarez, and Maria Guel, Waivers of Conflicts of Interest, MB Docket No. 23-267 (filed Aug. 25, 2024).

¹⁹ See, e.g., D.C. Bar Ethics Opinion 380, Conflict of Interest Issues Related to Witnesses (January 2021) at C-1 ("If a lawyer were representing both a party and a witness in the same case, Rule 1.7(a) would prohibit any cross-examination of the witness adverse to any position that the witness took on direct examination. Informed consent could not remove this conflict").

²⁰ Transcript of Status Conference, Tr. 13:8-19 (Aug. 14, 2024).

²¹ Tr. 9:13-10:21 (Aug. 14, 2024).

²² Tr. 28:24-29:25 (Aug. 14, 2024).

²³ Tr. 14:10-25 (Aug. 14, 2024).

²⁴ *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Order, MB Docket No. 23-267, FCC 24M-01, 2024 WL 488277 (ALJ Feb. 5, 2024) at paras. 14-17, 29 (*February 5 Order*).

²⁵ *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Order to Show Cause Why an Order of Revocation Should not be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture, MB Docket No. 23-267, DA 23-678, 2023 WL 5197159 (MB Aug. 10, 2023) (*HCCN HDO*) at paras. 107-111 (re Mr. Guel's statements) and paras. 79-80 (re Ms. Juarez and Ms. Guel's inconsistencies).

Guel admits that he retained control of the captioned stations despite representing to the Commission that he transferred them to Ms. Juarez, who he now indicates had very little involvement with them. In addition, the Presiding Judge has expressed concern regarding filings and statements made by Mr. Guel and Maria Guel in this proceeding that directly contradict information contemporaneously provided to the Securities and Exchange Commission in relation to a transaction involving another Guel family licensee.²⁶ She made clear that “[t]he potential lack of candor demonstrated by Mr. Guel, Maria Guel, and others before the Presiding Judge . . . is ripe for immediate consideration.”²⁷ She has similarly observed that “with each filing in this proceeding, the control and operation of the Guel family’s broadcast licenses becomes less clear.”²⁸ It is therefore not only foreseeable but likely that there will be incongruity in the testimony of Mr. Guel, Ms. Juarez, and Ms. Guel.

9. The goal of this inquiry is not merely to ensure Mr. Alpert’s ethics compliance, which is ultimately his responsibility. It is the obligation of the Presiding Judge to conduct hearing proceedings “as will best conduce to the proper dispatch of business and the ends of justice.”²⁹ This is consistent with the way that courts analyze allegations that a participating attorney has violated bar rules. Those cases not only consider the violation itself, be it actual or potential, but typically also gauge the effect of the conduct on the proceeding, to determine whether it has been tainted as a result of the attorney’s actions and whether those actions could affect the outcome of the case.³⁰ Mr. Alpert is seeking to continue to serve as counsel for the named party in this hearing, Mr. Guel, and to additionally act as deposition counsel and potentially appear at hearing as counsel for witnesses Jennifer Juarez and Maria Guel, whose testimony could impeach Mr. Guel’s credibility.³¹ That raises serious potential for violation of Rule 1.7. Moreover, the alleged irregularities in Mr. Alpert’s prior representation of Ms. Juarez as licensee of the subject stations could also affect the utility of some discovery in this proceeding.³²

10. The Presiding Judge is afforded significant discretion in managing discovery, which should inform the designated issues in a way that is fair to all participants.³³ After carefully considering the potential for confusion and conflicts of interest among the deponents, the likely impact of such confusion and conflict on the utility of their testimony, the trajectory of this proceeding so far, and the imperative to move this hearing forward equitably and efficiently, the Presiding Judge finds that Mr. Alpert’s proposed simultaneous representation of all three deponents is fundamentally at odds with “the proper dispatch of business and the ends of justice.” As a result, Mr. Alpert may not represent Jennifer

²⁶ *February 5 Order* at para. 26.

²⁷ *Id.* at para. 27.

²⁸ *Hispanic Christian Community Network, Antonio Cesar Guel, and Jennifer Juarez*, Order re Motion to Enlarge, MB Docket No. 23-267, FCC 24M-03, 2024 WL 1526709 (ALJ Apr. 4, 2024) at para. 15.

²⁹ 47 CFR § 1.243(n).

³⁰ *Koller v. Richardson-Merrell, Inc.*, 737 F.2d 1038, 1055-56 (D.C. Cir. 1984), *vacated on other grounds*, 472 U.S. 424 (1985). For a broader survey of D.C. Circuit rulings and those of other circuits regarding removal of counsel, see *Paul v. Judicial Watch, Inc.*, 571 F.Supp.2d 17 (D.D.C. 2008).

³¹ While Ms. Juarez continues to appear in the caption of this proceeding and remains a party in MB Docket No. 23-267, she has waived her right to participate in this hearing. See *Juarez Certification Order*, *supra* n.5.

³² Matters regarding Ms. Juarez discussed at the status conference introduce uncertainty as to whether Ms. Juarez actually signed documents that Mr. Alpert filed with the Commission, both in this proceeding and otherwise. These allegations, if proven, could raise the possibility of a conflict between Mr. Alpert and Ms. Juarez, providing a separate basis for prohibiting Mr. Alpert from representing Ms. Juarez in depositions or other aspects of this hearing proceeding.

³³ *William L. Zawila*, 34 FCC Rcd 13036, 13045 (2019) (“Administrative Law Judges have broad discretion in managing discovery”).

Juarez and Maria Guel in this hearing proceeding. Ms. Juarez and Ms. Guel will be given sufficient time to acquire new counsel if they choose to do so. They may also opt to proceed without counsel. By moving ahead in this way, it will be clear to all that Mr. Alpert appears at the depositions solely as counsel for Mr. Guel, which protects the interests of Mr. Guel and the integrity of discovery while preserving Ms. Juarez's and Ms. Guel's right as subpoenaed deponents to be represented by counsel.³⁴

11. The Enforcement Bureau additionally mentioned during that status conference that Mr. Alpert could be called as a witness in this hearing.³⁵ The Presiding Judge previously raised that issue in light of DC Bar Rule 3.7, which prohibits a lawyer from representing someone in a trial in which the lawyer will be a necessary witness.³⁶ Because Mr. Alpert's testimony is not contemplated at this time, and the bar restriction does not generally apply prior to the formal trial/hearing stage of a proceeding, Rule 3.7 does not currently pose an impediment to Mr. Alpert's representation of Mr. Guel.³⁷ With respect to informal assistance Mr. Alpert may have provided to other nonparties involved in this matter, the potential for a conflict is less pronounced. The Presiding Judge will for now leave it up to Mr. Alpert to gauge whether such informal assistance conflicts with his representation of Mr. Guel.³⁸

12. Mr. Alpert indicated during the status conference that he and/or Mr. Guel may file an interlocutory appeal of this Order if he is not permitted to represent all three deponents.³⁹ Presumably, Mr. Alpert is referring to section 1.301(a)(4) of the Commission's rules, 47 CFR § 1.301(a)(4), which states that, unlike most interlocutory rulings of the Presiding Judge, a ruling that removes counsel from a hearing is appealable as a matter of right, i.e., may be immediately appealed to the Commission. The Presiding Judge does not agree that this Order falls under section 1.301(a)(4). Mr. Guel filed a Notice of Appearance in this proceeding on behalf of Antonio Cesar Guel.⁴⁰ This Order does not foreclose him from continuing to represent Mr. Guel. On the other hand, he has never previously entered an appearance or otherwise asked for or been granted leave to represent either Ms. Juarez or Ms. Guel in this hearing proceeding. As a result, this Order does not remove him as counsel from the hearing but merely declines to permit him to broaden his role to include simultaneous representation of Mr. Guel, Ms. Juarez, and Ms. Guel.

13. As previously noted, the Presiding Judge suspended discovery in this matter on July 23, 2024. Discovery will continue to be suspended for 45 days to afford Jennifer Juarez and Maria Guel an opportunity to locate new counsel to represent them in their depositions. If Ms. Juarez and/or Ms. Guel retain counsel other than Mr. Alpert to assist them with their depositions, they or their new representatives are to notify counsel for Mr. Guel, the Enforcement Bureau, and the Office of Administrative Law Judges

³⁴ 5 U.S.C. § 555 ("A person compelled to appear in person before an agency or a representative thereof is entitled to be accompanied, represented, and advised by counsel"); 47 CFR § 1.27 ("Any individual compelled to appear in person in any Commission proceeding may be accompanied, represented, and advised by counsel as provided in this section").

³⁵ Tr. 10:24-11:5 (Aug. 14, 2024).

³⁶ *Summary of Initial Conference* at para. 9.

³⁷ *Id.* (citing D.C. Bar Ethics Opinion 228, *Lawyer-Witness Participation in Pre-Trial Proceedings* (May 19, 1992)).

³⁸ For example, the Enforcement Bureau indicated that Homero Lozano, who was subpoenaed but is not scheduled to be deposed, told them that Mr. Alpert is representing him. Tr. 7:10-15 (Aug. 14, 2024). Mr. Alpert responded that he does not represent Mr. Lozano. Tr. 12:13-17 (Aug. 14, 2024).

³⁹ Tr. 37:17-23 (Aug. 14, 2024).

⁴⁰ Antonio Cesar Guel, Notice of Appearance, MB Docket No. 23-267 (Aug. 30, 2023).

within 45 of the release date of this Order.⁴¹ Ms. Juarez and Ms. Guel may alternatively opt to be deposed without counsel; that will be presumed if the Office of Administrative Law Judges is not notified of new counsel within 45 days of the release date of this Order. All counsel are directed to work together to determine a mutually agreeable deposition schedule that affords any new counsel sufficient time to become familiar with this case. Within 60 days of the release date of this Order, Mr. Guel and the Enforcement Bureau are directed to file proposed revised discovery and hearing schedules to be considered by the Presiding Judge.

14. Accordingly, **IT IS ORDERED** that Dan J. Alpert **MAY NOT SERVE** as counsel for Jennifer Juarez and/or Maria Guel in depositions or other aspects of this hearing proceeding.

15. **IT IS FURTHER ORDERED** that if Jennifer Juarez and/or Maria Guel retain alternate legal representation, they or their new counsel **SHALL NOTIFY** counsel for Antonio Cesar Guel and for the Enforcement Bureau and the Office of Administrative Law Judges **WITHIN 45 DAYS** of the release date of this Order. If no such notice is given, it will be presumed that Ms. Juarez and/or Ms. Guel choose to be deposed without counsel.⁴²

16. **IT IS FURTHER ORDERED** that Antonio Cesar Guel and the Enforcement Bureau **SHALL FILE** proposed updated hearing schedules **WITHIN 60 DAYS** of the release date of this Order. The parties may elect to file independently or to collaborate on a single joint proposal.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge

⁴¹ The email for Mr. Guel's counsel, Dan Alpert, is dja@commlaw.tv; the email for the Enforcement Bureau is EBHearings@fcc.gov; the contact for the Office of Administrative Law Judges is Special Counsel John B. Adams, who can be reached at JohnB.Adams@fcc.gov.

⁴² An electronic copy of this Order will be sent to the email addresses on file for Ms. Juarez and Ms. Guel. A printed copy of this Order will be sent certified mail, return receipt requested, to their physical addresses.