

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Notice of Seizure and Intent To Forfeit
Firearm, CF No. 366052 & 366053**NOTICE OF PREHEARING CONFERENCE
AND NOTICE OF HEARING**

PLEASE BE ADVISED that a prehearing conference will be held by telephone conference call on **April 27, 2010, beginning at 2:00 p.m.** and continuing as long as necessary.

Participating in the prehearing conference telephone call will be Kathleen D. Sheehy, the undersigned Administrative Law Judge, whose office is located at 600 North Robert Street, PO Box 64620, St. Paul, Minnesota 55164-0620; the Conservation Officer who issued the citation, Karl Hadrits; US ATF Agent Aaron Doctor; and the appellants herein, Marshall Jarvela and James Jarvela. At the time set for the conference call, the parties should call 1-866-767-9127 and use the following passcode: "5251952." If it is necessary to change the time or date of the conference call, please contact the Judge immediately.

The purpose of the prehearing conference telephone call is to determine the nature of the dispute that caused the appeal, and to determine the best way to resolve it. The parties may agree that the Administrative Law Judge may issue a recommended decision based on the record made during the prehearing conference. If the appeal cannot be resolved during the telephone call itself, then the Judge will set a time for a hearing. The Judge will also decide whether the hearing shall be held by telephone or in person.

The citation which is being appealed was issued pursuant to Minn. Stat. § 97A.223, subd. 3 (2008). That statute provides that if a person appeals the seizure and administrative forfeiture of property, the hearing shall be held pursuant to procedures set forth in Minn. Stat. § 116.072, subd. 6. That statute in turn provides for an expedited administrative hearing process, and refers to Minn. R. 1400.8510 to 1400.8612. These are the rules which will govern the conduct of this appeal. Copies of the above-referenced statutes and rules may be obtained from Minnesota's Bookstore, 660 Olive Street, St. Paul, Minnesota 55155, telephone: 651-297-3000. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found using the Internet at www.revisor.leg.state.mn.us/stats/.

The rules may be found at www.revisor.leg.state.mn.us/arule/.

In this case, the DNR maintains that it seized the firearm because Marshall Jarvela unlawfully possessed it in violation of federal law, specifically 18 U.S.C. § 922(g)(9). That provision makes it unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence to possess any firearm or ammunition. The DNR must prove that Marshall Jarvela was convicted of a misdemeanor crime of domestic violence, as that term is defined in 18 U.S.C. § 921(a)(33), and that he possessed a firearm on November 7, 2009. If the parties anticipate offering any documents into evidence during the telephone conference, including conviction or sentencing records, they must send them to the Administrative Law Judge by **April 20, 2010**, and send copies to the other parties on the same date.

It is not necessary that a person have an attorney in order to participate in this case. They may, however, choose to be represented by legal counsel or any other representative of their choice.

Unless the Administrative Law Judge decides differently, the only parties to participate in the prehearing conference telephone call will be Officer Hadrits, Agent Doctor, Marshall Jarvela and James Jarvela. Any other person who desires to become a party to this case must submit a timely petition to intervene pursuant to Minn. R. 1400.8570. This petition must show how that person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought, and shall indicate petitioner's statutory right to intervene if one should exist. If the petition is granted, and the petitioner is given full party privileges, then the petitioner will have the right to present evidence and witnesses, and will also have the right to question witnesses presented by the other parties. Even without filing a petition to intervene, any person may offer testimony or other evidence which is relevant to the case, but they are subject to being questioned by the parties. Generally, non-parties are not allowed to question witnesses provided by the parties.

If a hearing is held, the Administrative Law Judge and the Commissioner can base their decision only on factual information or evidence that is part of the hearing record. Persons participating in the hearing should have available all documents, records, witnesses and any other evidence they need to present their position. Subpoenas may be available to compel the attendance of witnesses or other production of documents. See Minn. R. 1400.8601 for the procedures regarding subpoenas.

If a hearing is held, the Administrative Law Judge will issue a recommended decision after the record has closed. A copy of the decision will be sent to each party and to the Commissioner. After allowing at least five days to pass, the Commissioner will issue a final order. During the five-day period, the parties may file comments with the Commissioner regarding the recommended decision.

Failure to participate in the prehearing conference telephone call or failure to appear at the hearing will result in the citation being upheld and the fine will have to be

paid within thirty (30) days of the issuance of the Commissioner's final decision, with no further opportunities for administrative appeal.

It is likely that an appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. The statute (section 116.072, subd. 6(d)) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to the Administrative Law Judge at 651-361-7900 or Pat Watts, Policy/Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone (651) 259-5058.

Dated: March 24, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge