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13 Attorneys for Applicant  
14 RBR Management, LLC  
15 dba Community Ambulance

16 **IN THE OFFICE OF ADMINSTRATIVE HEARINGS**

17 In the Matter of:

18 RBR Management, LLC dba Community  
19 Ambulance,

20 Applicant.

Docket No. 2017-EMS-0104-DHS  
(EMS No. 0283)

**APPLICANT'S  
MOTION TO STRIKE ABC  
AMBULANCE'S LATE-FILED  
ADDITIONAL REQUEST FOR  
ISSUANCE OF SEVEN  
SUBPOENAS DUCES TECUM**

(Assigned to the Honorable  
Tammy L. Eigenheer)

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25 Pursuant to A.A.C. R2-19-102 & 106, Applicant RBR Management LLC,  
26 dba Community Ambulance ("Applicant" or "Community Ambulance") moves to  
27 strike Intervenor ABC Ambulance's late-filed Request for Issuance of Seven  
28 Subpoenas Duce Tecum (the "Late SDT Request"). ABC Ambulance neither

1 asked Applicant or the other Intervenors for a stipulation to file the Late SDT  
2 Request, nor sought leave of this Court showing the requisite good cause for filing  
3 a second set of requests for subpoenas well after the May 10, 2018 filing deadline.  
4 ABC Ambulance should not be permitted to file a second round of requests for  
5 subpoenas, and this Court is well-within its discretion to strike the Late SDT  
6 Request as untimely. The following memorandum of points and authorities  
7 supports this motion.

### 8 MEMORANDUM OF POINTS AND AUTHORITIES

#### 9 **1. Factual and Procedural Background**

10 On February 23, 2018, the Court held a pre-hearing conference in this  
11 matter (the “Pre-Hearing Conference”). At the Pre-Hearing Conference, the  
12 Court set a number of pre-hearing deadlines measured from the first hearing  
13 date, July 30, 2018. Those deadlines included a May 10, 2018 deadline for the  
14 submission of all requests for subpoenas. In accordance with that deadline, on  
15 Thursday, May 10, 2018, Applicant and Intervenors Maricopa Ambulance and  
16 the AMR CON Holders filed various requests for subpoenas. ABC Ambulance,  
17 however, did not file any requests for the issuance of subpoenas on deadline day.

18 On Friday, May 11, 2018, one-day after the deadline for requests for  
19 subpoenas, counsel for ABC Ambulance asked if she could file requests for  
20 subpoenas on that day – May 11, 2018. (A true and correct copy of the May 11,  
21 2018 email correspondence is attached at Exhibit 1.) Counsel for ABC Ambulance  
22 explained that her “practice is typically to wait for the case management order  
23 and then send it to my docketing people to docket the deadlines after the order is  
24 issued. Given that our ALJ did not issue a case management order after our  
25 February 23 hearing, I did not have the subpoena date on my calendar.” About  
26 an hour later, counsel for Applicant let ABC Ambulance’s counsel know there was  
27 no objection: “Adriane, Totally understandable and ok with your filing today. We  
28

1 will not be objecting to ABC’s subpoenas as late.” This agreement, of course,  
2 related only to this short one-day extension ABC Ambulance’s counsel requested  
3 and not to any and all requests for subpoenas ABC Ambulance decided to file  
4 after May 11. As agreed, on May 11, 2018, ABC Ambulance filed its Request for  
5 Issuance of Subpoenas Duces Tecum, requesting this Court issue subpoenas to  
6 Applicant and Dignity Health.

7 Then on May 22, 2018, without either asking for a stipulation to file the  
8 Late SDT Request or seeking leave of the Court to file additional requests for  
9 subpoenas –12 days after the May 10, 2018 deadline – ABC Ambulance  
10 unilaterally filed the Late SDT Request. Through the Late SDT Request, ABC  
11 Ambulance seeks the issuance of subpoenas directed to the various fire chiefs  
12 (and one mayor) whom submitted letters of support for Community Ambulance’s  
13 application for a Certificate of Necessity – all of which Community Ambulance  
14 disclosed on April 23, 2018 as hearing exhibits through its Initial List of  
15 Witnesses and Exhibits.<sup>1</sup> It should be noted here that although the other  
16 Intervenors (the AMR CON Holders and Maricopa Ambulance) did not seek to  
17 have subpoenas issued to the fire chiefs through their respective requests for  
18 issuance of subpoenas, it is Applicant’s understanding that public records  
19 requests have been made to the fire districts and municipalities principally  
20 seeking the same documents ABC Ambulance seeks through the subpoenas it has  
21 asked the Court to issue through the Late SDT Request.

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25 <sup>1</sup> The Late SDT Request asks this Court to issue subpoenas to (1) Kara Kalkbrenner, Fire  
26 Chief, Phoenix Fire Department; (2) Paul Adams, Fire Chief, Avondale Fire and Medical  
27 Department; (3) Thomas Dwiggin, Fire Chief, City of Chandler Fire, Health and Medical  
28 Department; (4) Jenn Daniels, Mayor of Gilbert; (5) Mary Cameli, Fire Chief, Mesa Fire and  
Medical Department; (6) Greg Ruiz, Fire Medical Rescue Chief, City of Tempe; and (7) Mark  
Nichols, Fire Chief, Daisy Mountain Fire District.

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**2. Legal Argument**

Trial courts have broad discretion in ruling on discovery and disclosure issues, and appellate courts will not disturb those rulings absent an abuse of discretion. *See Marquez v. Ortega*, 231 Ariz. 437, 441, 296 P.3d 100, 104 (Ct. App. 2013), citing *Link v. Pima County*, 193 Ariz. 336, 338, ¶ 3, 972 P.2d 669, 671 (App.1998). Under the Arizona Rules of the Civil Procedure (which this Court follows absent contrary administrative rules of procedure), unless there is a showing of good cause, this Court “must enter such orders as are just ... if a party or attorney fails to obey a scheduling or pretrial order or fails to meet the deadlines set in the order.” *See* Ariz. R. Civ. P. 16(i)(1)(A); *see also* Ariz. Admin. Code R2-19-102(C) (“If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.”) Using the Arizona Rules of Civil Procedure as guidance, and considering that ABC Ambulance provided no reason whatsoever, let alone a reason that constitutes good cause, for its late filing of a second batch of subpoena requests, this Court is well-within its broad discretion to enforce the deadlines it has established in this case and strike the Late SDT Request.

While Applicant freely agreed to ABC Ambulance’s request for a short extension to May 11, 2018 to file requests for subpoenas, ABC Ambulance never asked for an additional extension of time to file yet additional requests for subpoenas. Nor has any reason at all been given to the Court for the unilateral filing of the Late SDT Request – filed almost two-weeks after the filing deadline. ABC Ambulance never bothered to seek leave of this Court, as it must, to file the Late SDT Request, and has established no good cause for why it should be allowed to file a second round of requests for subpoenas 12 days after the deadline. To be clear, this is not an issue of ABC Ambulance missing a deadline. This is an

1 example of ABC Ambulance taking a second bite at the apple. ABC Ambulance  
2 should not be permitted to flaunt and disregard the Court's deadlines in this way.  
3 The other Intervenors and Applicant all adhered to the subpoena request  
4 deadline and ABC Ambulance should be held to those same Court ordered  
5 deadlines.

6 Furthermore, the Late SDT Request is not only unnecessary, but there is  
7 likely no prejudice to ABC Ambulance if the Court grants this Motion. As noted  
8 above, Applicant understands that the other Intervenors have issued public  
9 records requests to these same fire chiefs to discover the same evidence ABC  
10 Ambulance seeks through the Late SDT Request. Not to mention, ABC  
11 Ambulance is well within its rights to issue its own public records requests to  
12 these public entities to obtain the documents it seeks through the Late SDT  
13 Request.

### 14 **3. Conclusion**

15 For these reasons, Applicant respectfully requests the ALJ enforce the  
16 established deadlines in this case and strike the Late SDT Request as untimely.  
17 Applicant further respectfully requests the Court issue a case management order  
18 setting forth the deadlines ordered at the Pre-Hearing Conference in the hopes of  
19 avoiding any further confusion about the pre-hearing deadlines in this case.  
20

21 RESPECTFULLY SUBMITTED this 1st day of June, 2018  
22

23 **HENDRICKS MURPHY, PLLC**

24  
25 By /s/ Brendan Murphy  
26 Brendan Murphy  
27 3101 N. Central Ave., Suite 970  
28 Phoenix, Arizona 85012

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**THE MEYERSON LAW FIRM**

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Phoenix, Arizona 85016

Attorneys for Applicant

**ORIGINAL** filed this 1<sup>st</sup> day  
of June, 2018 via the OAH  
electronic document filing system  
<https://portal.azoah.com/oedf>, with  
copies provided to all parties on the  
approved mailing list by posting  
through the designated OAH website at  
<https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html>,  
in accordance with Case Management Order No. 1.

By: */s/ Brendan Murphy*

# **EXHIBIT 1**

## Brendan Murphy

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**From:** Hofmeyr, Adriane J. <Adriane.Hofmeyr@quarles.com>  
**Sent:** Friday, May 11, 2018 12:58 PM  
**To:** Brendan Murphy; jeff@themeyersonfirm.com  
**Cc:** Paul McGoldrick (paulmcgoldrick@smbattorneys.com); Ronna Fickbohm; Jim Belanger; Webster, Kelly  
**Subject:** RE: Community Ambulance subpoenas [QBLLP-ACTIVE.FID39104319]

Much appreciated, Brendan. I can apply my mind to your suggested scheduling once I'm done filing my subpoenas!

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**From:** Brendan Murphy [mailto:brendan@hendricksmurphy.com]  
**Sent:** Friday, May 11, 2018 11:42 AM  
**To:** Hofmeyr, Adriane J. (TUC x 7721) <Adriane.Hofmeyr@quarles.com>; jeff@themeyersonfirm.com  
**Cc:** Paul McGoldrick (paulmcgoldrick@smbattorneys.com) <paulmcgoldrick@smbattorneys.com>; Ronna Fickbohm <rfickbohm@TucsonTrusts.com>; Jim Belanger <jjb@jbelangerlaw.com>; Webster, Kelly (TUC x7712) <kelly.webster@quarles.com>  
**Subject:** RE: Community Ambulance subpoenas [QBLLP-ACTIVE.FID39104319]

Adriane, Totally understandable and ok with your filing today. We will not be objecting to ABC's subpoenas as late.

Here is a question for the larger group. I anticipate that folks will be filing objections to subpoenas and I wonder if we could set up a briefing schedule? Maybe objections by May 21 with responses by May 29? Just a suggestion.

Let me know your thoughts.

Thank you,

Brendan

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**From:** Hofmeyr, Adriane J. <[Adriane.Hofmeyr@quarles.com](mailto:Adriane.Hofmeyr@quarles.com)>  
**Sent:** Friday, May 11, 2018 10:41 AM  
**To:** Brendan Murphy <[brendan@hendricksmurphy.com](mailto:brendan@hendricksmurphy.com)>; jeff@themeyersonfirm.com  
**Cc:** Paul McGoldrick (<[paulmcgoldrick@smbattorneys.com](mailto:paulmcgoldrick@smbattorneys.com)>) <[paulmcgoldrick@smbattorneys.com](mailto:paulmcgoldrick@smbattorneys.com)>; Ronna Fickbohm <[rfickbohm@TucsonTrusts.com](mailto:rfickbohm@TucsonTrusts.com)>; Jim Belanger <[jjb@jbelangerlaw.com](mailto:jjb@jbelangerlaw.com)>; Webster, Kelly <[kelly.webster@quarles.com](mailto:kelly.webster@quarles.com)>  
**Subject:** Community Ambulance subpoenas [QBLLP-ACTIVE.FID39104319]

Brendan and Jeff,

To the extent that yesterday was the deadline to file subpoenas ... My practice is typically to wait for the case management order and then send it to my docketing people to docket the deadlines after the order is issued. Given that our ALJ did not issue one after our February 23 hearing, I did not have the subpoena date on my calendar. I would like to file subpoenas today, and wanted to know your position on whether you will oppose it as being late, or whether you will be okay with my filing today.

I'd appreciate your letting me know as soon as you can.

Thanks!



Adriane



**Adriane J. Hofmeyr** / Partner

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