

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE COMMISSIONER OF THE DEPARTMENT OF
ADMINISTRATION**

FOX SYSTEMS, INC.,)	
)	
v.)	OAH No. 07-0594-PRO
)	RFP No. 2007-0600-6529
DEPARTMENT OF HEALTH &)	
SOCIAL SERVICES.)	
_____)	

ORDER ON MOTION FOR LIMITED PARTICIPATION

Qualis Health moved for limited participation in this proceeding on September 12, 2007, and the matter was argued during the case planning conference held this date. DHSS has no objection to the motion. Fox Systems has no objection on condition that Qualis Health be treated as a party for purposes of discovery. Qualis Health objects to the proposed condition.

During the conference, the ALJ and counsel all seemed to perceive a dichotomy between limited intervenor status (which would make Qualis a party subject to party discovery) and amicus status (which was assumed to place the participant outside the scope of discovery between parties). The ALJ suggested that if Qualis wished to offer evidence, it must be an intervenor. Qualis argued that amici are often permitted to present evidence. At the ALJ's invitation, Qualis has supplemented its motion with citations to authority for its position.

The cases Qualis cites discuss the role of amici in cases before courts of appeal. The present case is more analogous to a trial court proceeding. Having said that, a quick review of cases on trial-court-level amici shows the dichotomy perceived by all between intervenor and amicus status with respect to discovery is a false one, and that trial courts have enormous discretion to fashion a level of participation that fits the case, including full intervenor, limited intervenor, "litigating amicus" (participating in discovery and evidence presentation but without appeal rights), various forms of "amicus-plus" participation that may or may not entail exposure to discovery, and ordinary amicus roles.

In this case, it seems fairest that if Qualis wishes to be able to present evidence at the hearing or in the context of summary adjudication, it needs to be subject to discovery, one purpose of which is to enable adverse parties to probe for "the rest of the story" behind other parties' evidence. Of course, Qualis would have the same rights as all other parties to object to overbroad or otherwise improper discovery, as well as to seek discovery.

Accordingly, Qualis's Motion for Limited Participation will be granted on condition that Qualis accept party status for purposes of discovery. If Qualis is unwilling to accept the condition, it will be granted only pure amicus status which will be limited to briefing and argument rights to be worked out in the next case planning conference. Qualis can make its election at that conference.

DATED this 12th day of October, 2007.

By: Signed
Christopher Kennedy
Administrative Law Judge

Certificate of Service: The Undersigned certifies that on the ____ day of _____, 2007, a true and correct copy of this **document** was **sent by pdf attachment** to the following: Max Garner (counsel for Fox Systems); Marne Woods (co-counsel for Fox Systems); Robert K. Stewart, Jr. (counsel for proposed intervenor Qualis Health); Marjorie Vandor, AAG; Rachel Witty, AAG (participating temporarily); Linda Hulse, DHSS.

By: _____
C. Kennedy

[This document has been modified to conform to the technical standards for publication.]