

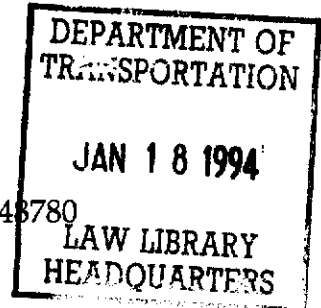
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC.

SERVED JAN 14 1994

Issued by the Department of Transportation
on the 14th day of January, 1994

ATX, INC.
FITNESS INVESTIGATION

Docket 48780



ORDER

By a motion filed on January 3, 1994, ATX requested that the Department: (1) bar Public Counsel from submitting a brief or otherwise participating further in the case; (2) strike Public Counsel's past pleadings and briefs; and (3) appoint a Special Master to review the record and issue a new case decision.¹ The ATX motion was based on allegations that Public Counsel's lead trial attorney has a brother who: (1) was an Eastern pilot at the time that Frank Lorenzo (ATX's founder and major shareholder) owned it; (2) is now a USAir pilot; (3) at some point shared a residence with the attorney; and (4) is a member of the Air Line Pilots Association. ATX argues that these allegations create a conflict of interest and an appearance of lack of impartiality.

By a memorandum in opposition to ATX's motion filed on January 12, 1994, Public Counsel requests that the ATX motion be denied.² Public Counsel argues that ATX's assertions are without basis and contain many misstatements and unfounded insinuations. It claims, with a declaration from the subject attorney attached, that the two brothers have not shared a residence for 23 years, never discussed the merits of this case, that the outcome of this proceeding will have no direct or predictable impact on the financial interests of the trial attorney's brother, and that the sibling relationship does not create even an appearance of a conflict of interest.

¹ The ATX motion was accompanied by a request for leave to file it. Good cause having been shown, we will accept the ATX motion.

² Public Counsel's document was also accompanied by a request for leave to file it. Good cause having been shown, we will accept Public Counsel's response.

Our Rules of Practice, 14 CFR Part 302, do not provide for the filing of additional pleadings on this matter. See Rule 4(f)(3) & 6(b). However, because Public Counsel's filing offers statements upon which other parties may wish to comment, we hereby provide leave for any party to file a reply thereto. Any filings shall be made within one week after the date of this order and served upon all parties.

ACCORDINGLY:

1. We grant leave to interested parties to file additional responsive documents to Public Counsel's *Opposition to ATX's Motion to Strike Public Counsel's Pleadings*; and
2. Responsive documents must be filed by Friday January 21, 1994 and served upon all parties.

By:

Patrick V. Murphy
Acting Assistant Secretary for Policy
and International Affairs

(SEAL)