

## DECISION MEMORANDUM

**TO: COMMISSIONER ANDERSON  
COMMISSIONER HAMMOND  
COMMISSIONER LODGE  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: CLAIRE SHARP  
DEPUTY ATTORNEY GENERAL**

**DATE: FEBRUARY 21, 2023**

**SUBJECT: IN THE MATTER OF ISLAND PARK WATER COMPANY’S FAILURE  
TO COMPLY WITH IDAHO PUBLIC UTILITIES COMMISSION  
REPORTING REQUIREMENTS AND REGULATIONS; CASE NO. ISL-W-  
23-01.**

### BACKGROUND

Island Park Water Company, Inc. (“Island Park” or “Company”) operates a “Water system” as a “Water corporation” as defined by *Idaho Code* §§ 61-124 and 61-125 and is a public utility subject to the jurisdiction of the Idaho Public Utilities Commission (“Commission”) under *Idaho Code* § 61-129. The Company operates under Certificate of Public Convenience and Necessity No. 317. Island Park’s service area comprises seven separate water systems located in Fremont County, Idaho.

The Commission ordered the Company to appear at a Show Cause Hearing on February 22, 2023. Order No. 35675. At its February 10, 2023, Decision Meeting, the Commission agreed to include additional issues at the Show Cause Hearing and reset the hearing date to March 13, 2023. Order No. 35682. On February 14, 2023, Dorothy McCarty, owner and operator of Island Park, (hereinafter “Ms. McCarty”) filed a request to dismiss the Show Cause Hearing (“Motion”).

### THE MOTION

On February 14, 2023, Ms. McCarty filed a request to dismiss the Show Cause Hearing set for February 22, 2023. Ms. McCarty alleges that she has submitted additional documents to satisfy the Commission’s Audit Request, and that she has a medical handicap that makes her unable to attend the Show Cause Hearing.

## STAFF'S POSITION

Commission Staff ("Staff") believes that Ms. McCarty is acting as an unlicensed attorney in a quasi-judicial proceeding. Further, Staff believes the Commission should not waive the requirement of representation in this matter, and Ms. McCarty should therefore be prohibited from representing the Company at the Show Cause Hearing or filing motions on behalf of the Company.

Commission rules require a partnership or corporation to be represented by a licensed attorney for quasi-judicial proceedings, including "matters such as formal complaints, petitions, motions, applications for modified procedure or technical/evidentiary hearings." IDAPA 31.01.01.43.02(b). Although there is a limited exception for participation in administrative proceedings in IDAPA 31.01.01.43.01, that limited exception does not apply to a Show Cause Hearing before the Commission. IDAPA 31.01.01.043.02(b) clearly states that "[a] partnership or corporation shall be represented by a licensed attorney."

Enforcement of the Commission's rule is not discretionary, and the Commission does not have the authority to define and regulate the practice of law. *See Idaho State Bar Ass'n v. Idaho Pub. Utilities Comm'n*, 102 Idaho 672, 673, 637 P.2d 1168, 1169 (1981).

[A] business entity, such as a corporation, limited liability company, or partnership, must be represented by a licensed attorney before an administrative body or a judicial body.

*Medrain v. Lee*, 166 Idaho 604, 608, 462 P.3d 132, 136 (2020) (internal citations and quotation omitted). Representation of another person before a public agency or service commission constitutes the unauthorized practice of law where the proceedings before those tribunals are held for purposes of adjudicating the legal rights or duties of a party. *Indian Springs, L.L.C. v. Indian Springs Land Investment, L.L.C.*, 147 Idaho 737, 215 P.3d 457, 464-465 (2009).

In this case the Company is a corporate entity as registered through the Idaho Secretary of State's website. However, the Company is not represented by counsel, and the Idaho State Bar directory of attorneys does not list Ms. McCarty as an attorney licensed to practice law in Idaho. Thus, Staff believes that Ms. McCarty is acting as an unlicensed attorney, the Commission may not waive the requirement of representation in this matter using Rule of Procedure IDAPA 31.01.01.13, and Ms. McCarty is therefore prohibited from representing the Company at the Show Cause Hearing or filing motions on behalf of the Company.

**STAFF RECOMMENDATION**

Staff recommends that the Commission reject Ms. McCarty's request to dismiss the Show Cause Hearing, as she would be acting as an unlicensed attorney and she is prohibited from representing the Company at the Show Cause Hearing or filing motions on behalf of the Company.

**COMMISSION DECISION**

Does the Commission wish to accept or reject Ms. McCarty's request to dismiss the Show Cause Hearing?



Claire Sharp  
Deputy Attorney General