

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter of the failure of MEM Partnership) Docket No.: 17-CONS-3398-CPEN
LP, a General Partnership ("Operator") to)
comply with K.A.R. 82-3-111 at the Cooley #1) CONSERVATION DIVISION
in Graham County, Kansas.)
_____) License No.: 3809

**STAFF'S RESPONSE TO MANAGING PARTNER'S MOTION "ADDENDUM: A
PETITION TO DETERMINE LEGAL REPRESENTATION FROM MEM
PARTNERSHIP, LP"**

MEM Partnership ("Operator") should be required to obtain legal representation by a Kansas licensed attorney. William Story's ("Managing Partner") prior appearance at hearing before the Commission on behalf of Operator, which appears to have occurred over a decade ago, constituted the unauthorized practice of law, violated Commission regulations, and should not inform whether Managing Partner can appear on behalf of Operator in this matter.

JURISDICTION

1. K.A.R. 82-1-228 provides rules regarding representation before the Commission. K.A.R. 82-1-228(d)(2) states that a corporation shall not be permitted to enter an appearance except by its attorney, K.A.R. 82-1-228(d)(1)(B) provides that any party may appear before the Commission through a Kansas-licensed attorney, and K.A.R. 82-1-228(d)(1)(A) provides that any party may appear before the Commission and be heard in person on that party's own behalf.
2. K.S.A. 77-515(c) provides that a state agency may require a corporation or other artificial person to participate by counsel.

3. K.S.A. 77-545(b)(2) states that once a hearing is scheduled and prior to the final order being issued, copies of written communications directed at the presiding officer shall be mailed to all parties of record.

BACKGROUND

4. Operator, a limited partnership formed in Texas, conducts oil and gas activities in Kansas under license number 3809.¹

5. On December 15, 2016, the Commission issued a Penalty Order against Operator for failing to bring the Cooley #1 well (“subject well”) into compliance with K.A.R. 82-3-111. On January 9, 2017, Managing Partner filed a request for hearing on behalf of Operator. On January 24, 2017, the Commission set a February 21, 2017, prehearing conference, which was continued to March 21, 2017. On March 23, 2017, the Prehearing Officer issued an order scheduling a June 15, 2017, evidentiary hearing.

6. On March 8, 2017, the Prehearing Officer received an ex parte communication from Managing Partner which contested Staff’s position (stated during the February 21, 2017, prehearing conference, where a continuance was sought and granted) that Operator needs to retain a Kansas licensed attorney in this matter. On March 22, 2017, the Prehearing Officer filed a Notice of Ex Parte Communication notifying Staff of improper contact by Managing Partner. On March 27, 2017, Managing Partner filed a communication entitled “Addendum: a Petition to Determine Legal Representation for MEM Partnership, LP,” to which Staff is presently responding.

¹ Despite “general partnership” language in the business name, previous filings with the Commission indicate the business is organized as a limited partnership. *See*, Application 07-CONS-047-CWLE (filed 8/28/2006) paragraph 1. As to the question of whether Operator is legally required to be represented by counsel, the distinction is meaningless. All partnerships are artificial entities required to be represented by a Kansas licensed attorney.

DISCUSSION

7. **A Limited Partnership is an “artificial person” that, similar to a corporation, should be represented by a Kansas licensed attorney.**

a. In his March 27, 2017 filing, Managing Partner implies that a partnership is sufficiently distinct from a corporation as to allow Operator to appear pro se before the Commission. The motion then discusses what Managing Partner perceives as the differences between a partnership and a corporation.

b. Commission Staff disagrees with Managing Partner’s assertions. Like a corporation, a partnership is a separate and distinct artificial “person” from the individual partners.² A limited partnership, if formed in Kansas, must file a certificate of limited partnership with the Secretary of State’s Office³ and is subject to annual reporting requirements.⁴ Though a limited partnership lacks the formality of a corporation, it similarly is designed to shield limited partners from full liability and restricts their authority. Just as Operator enjoys the benefits of artificial personhood, it should share what Managing Partner perceives as a burden; specifically, the statutory and regulatory requirements of being represented by counsel.

c. State statute confers authority on the Commission to determine whether a corporation or artificial person participating in a hearing is required to be represented by counsel.⁵ This requirement helps to maintain distinction between the entity requiring representation and, in the case of Operator, the partners. With the exception of out of state attorneys permitted to practice law on a narrow basis, the Kansas Supreme Court recognizes four

² See, K.S.A. 56a-101(j): “Person” means an individual, corporation, business trust, estate, trust, *partnership*, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

³ See, K.S.A. 56-1a151

⁴ See, K.S.A. 56-1a606 et seq.

⁵ See K.S.A. 77-515(c)

categories of individuals who may appear in Kansas courts: 1. Kansas licensed attorneys; 2. Law school graduates with a temporary permit to practice law; 3. Legal interns (law students) supervised by a member(s) of the bar responsible for the interns' activities; and 4. Non-lawyers who may represent only themselves and not others.⁶ Managing Partner does not fit into any of these categories.

d. Further, Commission regulations support Staff's contention that Operator requires counsel in this docket. Two portions of K.A.R. 82-1-228 specifically support this position. First, K.A.R. 82-1-228(d)(1)(B) provides that a party may appear before the Commission and be represented by an attorney who is regularly admitted to practice in the courts of record of the state of Kansas. Second, K.A.R. 82-1-228(d)(1)(A) only provides that a party may be heard in person on its own behalf.⁷

e. Under K.A.R. 82-1-228(d)(1)(A), Managing Partner cannot be heard in person except on behalf of Managing Partner. But Managing Partner is not a party to this proceeding, and acknowledges that he is a non-lawyer who seeks to represent Operator. In turn, Operator cannot be heard in person on its own behalf, because it is an artificial entity. Thus under Commission regulations, there is no mechanism allowing Managing Partner to represent Operator. Commission regulations do, however, explicitly allow Operator to be represented by a licensed Kansas attorney, which should be enforced against Operator.

f. Beyond the restrictions imposed by statute, Commission regulation, and case law regarding who can undertake legal representation of a business entity, the underlying rationale for requiring a Kansas licensed attorney is even more pronounced given recent correspondence with Commission Staff, wherein Managing Partner demonstrates a lack of understanding of

⁶ See, Artificial People: Why Corporations cannot appear in court without a lawyer, 84-Sep J. Kan. B.A. 20 (citing State ex rel. Stephan v. Adam, 243 Kan 619 (1988); State ex rel. Stephan v. Williams, 246 Kan. 681 (1990)).

⁷ Other portions of K.A.R. 82-1-228(d) clearly do not apply to the issue in this docket.

Commission regulations regarding Operator liability for abandoned and unplugged wells, the process to request a hearing, and the prohibition of impermissible ex-parte communications with the Prehearing Officer. Requiring Operator to obtain a Kansas licensed attorney protects not only the integrity of Commission proceedings but also the legal interests of Operator.

g. The Kansas Supreme Court has recognized the challenges posed by an individual engaged in the unauthorized practice of law.⁸ Members of the bar are subject to minimum legal education, competency, and moral character requirements. A Kansas attorney is subject to the Kansas Rules of Professional Conduct, and the consequences of failing to adhere to the rules, while representing a client in Commission proceedings. In short, statute, regulation, case law, and public policy all strongly support requiring Operator to be represented by counsel.

8. **Managing Partner's prior appearance before the Commission constituted the unauthorized practice of law and should not be further permitted.**

a. In his March 27, 2017 filing, Managing Partner states that he has previously appeared before the Commission. While there have been various Commission dockets in which Managing Partner filed documents on behalf of Operator, Staff has only identified one Commission docket, 06-CONS-146-CPEN, in which Managing Partner appeared in person before the Commission.⁹ The unauthorized practice of law clearly encompasses appearances in person, on behalf of another entity, making legal arguments in front of a Commission acting in its quasi-judicial capacity.¹⁰ While Staff acknowledges Managing Partner's previous unauthorized practice of law was performed in Managing Partner's good faith belief he could

⁸ See, e.g., *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990).

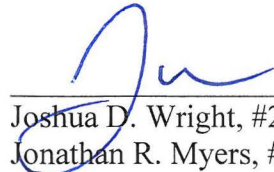
⁹ If there were other such dockets, they occurred over 17 years ago.

¹⁰ See, *State ex rel. Stephan v. Williams*: "A more recent source defines the practice of law as 'the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.'" (Quoting *R.J. Edwards, Inc. v. Hert*, 504 P.2d 407, 416 (Okla., 1972)).

represent Operator, the continued unauthorized practice of law is contrary to maintaining minimum requirements of competency and professionalism in matters before the Commission.

Wherefore, Staff respectfully requests the Commission require Operator to obtain legal representation by a Kansas licensed attorney to proceed further in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on 4/6/17, I caused a complete and accurate copy of this Response to be served via United States mail, with the postage prepaid and properly addressed to the following:

William Story
MEM Partnership LP, A General Partnership
PO Box 130832
Spring, TX 77393-0832

And delivered by email to:
Dustin Kirk, Deputy General Counsel
KCC Topeka Office



Paula Murray
Legal Assistant
Kansas Corporation Commission