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### Non-Lawyer Officer May 'Represent' LLC in Small Claims Court, Within Legal Limits

#### **2004-1550. Cleveland Bar Assn. v. Pearlman, 2005-Ohio-4107.**

On Final Report by the Board on the Unauthorized Practice of Law, No. UPL 02-05. The board's recommendation is rejected and the cause is dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor and Lanzinger, JJ., concur.

O'Donnell, J., dissents.

Opinion: <http://www.sconet.state.oh.us/rod/newpdf/0/2005/2005-Ohio-4107.pdf>

The Supreme Court of Ohio today ruled that a non-lawyer officer or salaried employee of a limited liability company (LLC) does not engage in the unauthorized practice of law by completing or filing documents on behalf of the company in a small claims court, or by appearing on behalf of the company at small claims court hearings, provided that a non-attorney does not engage in cross examination, argument or other acts of advocacy. The Court's 6-1 opinion was authored by Justice Judith Ann Lanzinger.

The case involved a complaint filed with the Supreme Court's Commission on the Unauthorized Practice of Law by the Cleveland Bar Association (CBA). The association alleged that Alan B. Pearlman of Cleveland, who is not an attorney, had engaged in the unauthorized practice of law by preparing and signing legal documents and making personal appearances in the small claims division of the Cleveland Heights Municipal Court on behalf of two limited liability companies, Roosevelt Investments, Ltd. and Boulevard Investments, Ltd. The companies are wholly owned by Pearlman and his wife, and Pearlman is an officer of both companies.

Because business entities such as corporations and limited liability companies are separate legal "persons" from their owners, the board concluded that Pearlman's appearances in 13 small claims court actions on behalf of the investment companies violated the Supreme Court rule that permits only licensed attorneys to prepare legal papers, make court appearances and otherwise "render legal services" *for another person*. Consistent with that finding, the board recommended that the Supreme Court order Pearlman to cease his small claims court activities and in future retain a licensed attorney to represent his business entities.

Pearlman entered objections to the board's findings and recommendation, citing a state law enacted in 1969 (R.C. 1925.17) in which the legislature specifically authorized "any bona fide officer or salaried employee" of a corporation to present or defend the company's claim in a small claims case, so long as a non-lawyer providing such representation does not conduct cross-examinations or make legal arguments to the court. In its response to Pearlman's objections, the CBA urged the

Court to rule that R.C. 1925.17 is unconstitutional and therefore void because it represents a legislative violation of the Supreme Court's exclusive authority under Article IV of the Ohio Constitution to regulate the practice of law.

In today's decision, the Court rejected the recommendation of the unauthorized practice board and held that R.C.1925.17 permits a non-lawyer company officer to sign and file documents and make appearances before a small claims court on behalf of a business entity, so long as he or she abides by the limitations set forth in that statute.

While acknowledging that "(i)t is the ordinary rule that a corporation may not litigate or appear in court represented by nonlawyer corporate officers or agents," Justice Lanzinger pointed to the Court's 2004 decision in *Cleveland Bar Assn. v. CompManagement* and its 1986 holding in *Henize v. Giles* as cases in which the Court has elected to permit limited nonlawyer representation of employers and claimants in state Workers' Compensation and Unemployment Compensation proceedings.

Although the *CompManagement* and *Henize* cases dealt with administrative proceedings rather than court cases, Justice Lanzinger wrote that "the goal of small claims court is similar – to provide fast and fair adjudication as an alternative to the traditional judicial proceedings. For example, attorneys may appear, but are not required to appear, on behalf of any party in small claims matters. ... Jurisdiction of the small claims court is limited to \$3,000 ...Claims for punitive damages, exemplary damages and prejudgment attachment are not permitted. There is no jury in small claims court. ... The hearings are simplified, and neither the Ohio Rules of Evidence nor the Ohio Rules of Civil Procedure apply. Thus, by design, proceedings in small claims courts are informal and geared to allowing individuals to resolve uncomplicated disputes quickly and inexpensively. Pro se activity is assumed and encouraged. The process is an alternative to full-blown judicial dispute resolution."

In rejecting the CBA's argument that R.C. 1925.17 violates the separation of powers between the judicial and legislative branches, Justice Lanzinger said the Court majority read the statute not "as intruding on our authority to regulate the practice of law or our rule-making power," but rather "as a mere clarification, stating that corporations may use small claims courts as individuals may, i.e. without attorneys, so long as their representatives do not otherwise act as advocates."

"In refusing to enjoin Pearlman's activities in the small claims division of municipal court, we recognize an exception, albeit a narrow one, to the general rule that corporations may be represented only by licensed attorneys," wrote Justice Lanzinger. "R.C. 1925.17 limits what a corporate representative may do. Pearlman observed these limitations. ... In small claims cases, where no special legal skill is needed, and where proceedings are factual, nonadversarial, and expected to move quickly, attorneys are not necessary."

Justice Lanzinger's opinion was joined by Chief Justice Thomas J. Moyer and Justices Alice Robie Resnick, Paul E. Pfeifer, Evelyn Lundberg Stratton and Maureen O'Connor.

In a dissenting opinion, Justice Terrence O'Donnell wrote that, in his view, "the General Assembly has ... unwittingly trespassed into a field of regulation left to the

judicial branch of government, more specifically, the Supreme Court of Ohio pursuant to Section 2(B)(1)(g), Article IV of the Ohio Constitution. This matter concerns the regulation of the practice of law in the State of Ohio, which is the province of the Supreme Court of Ohio, not the Ohio General Assembly.”

Justice O'Donnell differed from the majority, asserting that the forum in which a complainant files his case should not be determinative as to whether that individual has engaged in the unauthorized practice of law. Rather, Justice O'Donnell maintained that “the real issue is whether the complainant is acting in a pro se capacity or in a representative capacity.” Based on that analysis, Justice O'Donnell said he would hold that “R.C. 1925.17 encroaches upon the separation of powers doctrine, in that the legislature has interfered with the determination of which parties may act in a representative capacity in courts of law.”

Citing multiple previous Supreme Court decisions in which the court has held that only a licensed attorney may file pleadings in court or manage court actions on another's behalf, Justice O' Donnell pointed out that Mr. Pearlman chose to conduct his affairs as a limited liability company, which is a legal entity capable of suing and being sued.

Because Pearlman did not act in a pro se capacity, but as a legal representative of these companies, Justice O'Donnell found that his conduct constituted the unauthorized practice of law.

#### **Contacts**

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