

UPL ADVISORY OPINION NO 2013-2

Non-Lawyer Representation of Corporations, Unincorporated Associations, Nonprofit Corporations, Trusts, and Partnerships

Facts:

Shareholder, who is a non-lawyer, is the majority owner of a closely held corporation.

President, who is a non-lawyer, is the president of an unincorporated association.

Chairman, who is a non-lawyer, is the chairman of the board of a nonprofit corporation.

Trustee, who is a non-lawyer, is the sole trustee of a trust.

Partner, who is a non-lawyer, is the majority partner of a business partnership.

Each of the above non-lawyers is interested in representing his or her respective entity in court.

Questions:

1. May shareholder of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, represent his or her respective entity in state or federal court?

2. May majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, represent his or her respective entity in small claims court?

Conclusion:

1. No.
2. Yes.

Discussion:

I. Question No. 1 (Entity Representation in State and Federal Court)

A majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, who

attempts to represent his or her respective entity in state or federal court would likely be engaging in the unlawful practice of law. ORS 9.160; *see Oregon State Bar v. Wright*, 280 Or 693, 573 P2d 283 (1977).

As a general rule, although non-lawyers may represent themselves *pro se*, they may not represent entities in state or federal court. *See* ORS 9.320¹; 28 USC §1654.² This prohibition against non-lawyers representing entities includes, but is not limited to, the representation of for-profit and nonprofit corporations³, unincorporated associations⁴, trusts⁵ and partnerships⁶.

¹ ORS 9.320(1) provides, “Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, unless otherwise specifically provided by law.” *See Oregon Peaceworks Green, PAC v. Secretary of State*, 311 Or 267, 270–72, 810 P2d 836 (1991) (holding that the combined effect of ORS 9.160 and ORS 9.320 is to provide that persons may appear *pro se*, but entities must be represented by an lawyer); *but see State ex rel. Juvenile Dept. of Lane County v. Shuey*, 119 Or App 185, 191, 850 P2d 378 (1993) (holding that under the Indian Child Welfare Act an Indian tribe need not have a lawyer to intervene in child custody proceeding).

² 28 USC §1654 provides, “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” Federal courts interpret Section 1654 to prohibit non-lawyer representation of entities. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 US 194, 202, 113 S Ct 716 (1993) (“As the courts have recognized, the rationale for that rule applies equally to all artificial entities. Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 USC §1654, providing that ‘parties may plead and conduct their own cases personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.”) (footnote omitted).

³ ORS 9.320(1).

⁴ *See Oregon Peaceworks Green, PAC*, 311 Or at 271–72 (treasurer of an unincorporated political action committee, a non-lawyer, was not empowered to represent political action committee in state court); *Church of the New Testament v. U.S.*, 783 F2d 771, 773 (9th Cir 1986) (“unincorporated associations, like corporations, must appear through an attorney”).

⁵ *See Marguerite E. Wright Trust v. Dep't of Revenue*, 297 Or 533, 536, 685 P2d 418 (1984) (non-lawyer trustee of the plaintiff trust may not represent a

II. Question No. 2 (Small Claims Court Exception)

A majority owner of corporation, president of association, chairman of nonprofit, trustee of trust, or partner in a partnership, would likely be permitted to represent his or her respective entity as its legal representative in small claims court. Non-lawyers may represent entities of which they are the legal representative in the small claims department of an Oregon circuit or justice court. *See* ORS 46.415(5), ORS 55.090(2).

business trust); *Hansen v. Bennett*, 162 Or App 380, 383 n 4, 986 P2d 633 (1999) (noting that court dismissed an appeal filed on behalf of a corporation and a trust on the ground that an lawyer had not filed the notice of appeal for those entities); *C.E. Pope Equity Trust v. U.S.*, 818 F2d 696, 697 (9th Cir 1987) (holding non-lawyer trustee of organization, which was alleged to be trustee of trust bringing complaints, was two steps removed from the real party in interest and could not appear pro se to prosecute suit).

⁶ See *Rowland*, 506 US at 202; and *First Amendment Found. v. Vill. of Brookfield*, 575 F Supp 1207, 1207 (ND Ill 1983) (holding corporations, partnerships, and unincorporated associations may not appear through an officer or other non-lawyer representative), cited with approval in *Oregon Peaceworks Green, PAC*, 311 Or at 272.