WHEN CAN A LAY PERSON WHO IS A PARTNER WITH AN ATTORNEY OR ATTORNEYS ACT AS A REPRESENTATIVE OF THE PARTNERS WITHOUT ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW?

I. INTRODUCTION

Model Rule of Professional Conduct 5.4 prohibits attorneys from forming partnerships for profit with someone who is not an attorney if any of the activities of the partnership involve the practice of law.¹ This

1. Model Rule of Professional Conduct 5.4 provides that:
   (a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:
      (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after, the lawyer's death, to the lawyer's estate or to one or more specified persons;
      (2) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and
      (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.
   (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
   (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
   (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
      (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
      (2) a nonlawyer is a corporate director or officer thereof; or
      (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Model Rules of Professional Conduct Rule 5.4 (1994). See also The Florida Bar v. Hunt, 429 So. 2d 1201, 1202 (Fla. 1983) (attorney found to have violated
prohibition has been in place for almost the entire time that the conduct of attorneys has been regulated by set rules. The rationale behind this is to protect the professionalism of attorneys and maintain client and public confidence in the legal profession. There is concern that the attorney-client privilege and confidentiality will be compromised. There is also a fear of increasing the risk of creating situations that would involve a conflict of interest. This is reflected in the comments of the drafters of the Model Code of Professional Responsibility, who believed that these bans were necessary to "assure the public of integrity, competence, loyalty, and confidentiality in the delivery of legal services."

II. THIS PROHIBITION DOES NOT APPLY WHEN ATTORNEYS FORM PARTNERSHIPS WITH PERSONS WHO ARE NOT ATTORNEYS FOR ACTIVITIES OTHER THAN THE PRACTICE OF LAW

Even though the prohibition on attorneys forming partnerships with nonattorneys for the practice of law remains firm, attorneys are not prohibited from forming partnerships with persons who are not attorneys if the partnership is formed entirely for another purpose. An attorney is treated just like any other person when it comes to forming for-profit or not-for-profit partnerships as long as none of the partners engage in the prohibition when he had persons who were not attorneys as corporate officers in the professional association through which he practiced law).


   In the formation of partnerships for the practice of law, no person should be admitted who is not a member of the legal profession, duly authorized to practice, and amenable to professional discipline. No person should be held out as a practitioner or member who is not so admitted. . . . Partnerships between lawyers and members of other professions or nonprofessional persons should not be formed or permitted where a part of the partnership consists of the practice of law.

3. See id. at 618.

4. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 3-1 to 3-3 (1980); see also The Florida Bar v. James, 478 So. 2d 27 (Fla. 1985) ("The record in these cases documents the disastrous results that occur when a practicing member of the bar enters into a profit-making enterprise with a commercial business which subordinates the practice of the law to the activities of the commercial business.").
practice of law on behalf of the partnership.

A partnership with attorney and non-attorney partners is faced with the same problems and questions as face any other partnership. Questions as to how to operate on a day-to-day basis as well as questions over finances are sure to be common. This question over management and money could become a serious issue if the partnership becomes involved in litigation or other legal proceedings. The attorney partners would likely be faced with time constraints imposed by their personal law practice and would therefore be unable to represent the partnership. There would also be the problem of an increased risk in situations involving a conflict of interest. Could the partnership therefore be represented by one of its non-attorney partners in legal proceedings?

A. The Right to Appear Pro Se is a Personal Right Which Extends Only to Natural Persons

It is clear that an individual can represent himself pro se in any legal proceeding. When an individual appears pro se he is acting as his own attorney and is held to the same standards as someone proceeding with an attorney. This right to proceed pro se has been held in both state and federal courts to be a personal right that can extend only to natural persons.

1. The Right to Proceed Pro Se Clearly Does Not Extend to Corporations.—Because a corporation is a fictional entity, it is prohibited from making a pro se appearance. A corporation cannot appear or proceed

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6. See Diaz v. Carpenter, 650 N.E.2d 688, 691 (Ind. Ct. App. 1995) ("Indiana law is well settled that a litigant who chooses to proceed pro se will be held to the same established rules of procedure as trained legal counsel.").


8. See Turkey Point Property Owners' Ass'n, Inc. v. Anderson, 666 A.2d 904, 907 (Md. Ct. Spec. App. 1993) ("The requirement of [the rule] that corporations be represented in the circuit court by attorneys reflects a long history of legislation prohibiting lay persons from practicing law except in those situations in which they are acting pro se."); see also Brattman v. Secretary of the Commonwealth, 658 N.E.2d 159, 161 (Mass. 1995) ("Corporations, including nonprofit corporations, are artificial persons. [citations omitted]. . . . Thus, the plaintiff, is an officer of the
through one of its directors or officers—it must be represented by an attorney.9 Courts enforce this prohibition to protect the legal process and the rights of the litigants.10

*Turkey Point Property Owners' Ass'n, Inc. v. Anderson*" provides an example of how courts will enforce this prohibition, as well as providing an example of the importance the prohibition is usually given by courts. In *Turkey Point*, property owners petitioned to have property rezoned.12 A Property Owners' Association, which was organized as a corporation, opposed this rezoning.13 When the petition was granted, the Property Owners' Association appealed to the circuit court for review.14 The Court of Special Appeals dismissed the petition because it was signed by the president of the Property Owners' Association, who was not an attorney.15 Dismissal was proper because

Rule 2-131(a)(2) expressly requires that a corporation be represented by counsel unless otherwise provided by some rule or statute. Section

corporation who is not an attorney, may not represent the interests of the corporation in a legal matter.


It must be remembered . . . that a "corporation" is but a fictional "person," created by statute and endowed only with those attribute given by statute. [citations omitted]. A corporation "speaks" only by virtue of personification. [citations omitted]. The Supreme Court of the United States and federal courts of appeal have declared that fictional entities may not appear in civil actions pro se. [citations omitted]. It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel. [citations omitted]. Thus, save in a few aberrant cases, the lower [federal] courts have uniformly held that 28 U.S.C. § 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.

10. See id. at 65 ("[T]he conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently rings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative.").

11. 666 A.2d 904.

12. See id. at 905.

13. See id. at 906.

14. See id.

15. See id.
10-206(b)(4) of the Business Occupations and Professions Article allows for representation by corporate officers under certain circumstances, but no such circumstances exist in the instant case. The legislature clearly could have—but did not—create an exception for situations such as this had it so desired. As the long history of legislation prohibiting the practice of law by nonlawyers makes clear, the prohibition is a matter of utmost importance to Maryland lawmakers.\textsuperscript{16}

2. Some States Allow Corporations to Appear Pro Se in Certain Situations.—Although the rules generally require a corporation to be represented by an attorney in legal proceedings, some states allow an exception in specifically articulated situations.

In \textit{Layman-Hendren Pontiac, Cadillac, GMC Truck, Inc. v. Brown},\textsuperscript{17} a corporation was allowed to be represented by a non-attorney employee in small claims court. After the complaint was dismissed with prejudice by the trial court because the Plaintiff corporation was represented by an employee who was not an attorney,\textsuperscript{18} the court of appeals determined that this dismissal was in error because Ohio Revised Code Section 1925.17 “allows for the filing and presentation of claims by corporations in the Small Claims Division of a Municipal Court by non-Attorneys at Law provided the claims are initiated and prosecuted by an officer or salaried employee of the corporation.”\textsuperscript{19}

\textbf{B. Partnerships, Like Corporations, Are Artificial Entities}

A partnership, like a corporation, is an artificial entity created by the law.\textsuperscript{20} Can a partner then represent the partnership in a legal proceeding if that partner is not a lawyer?

1. On Occasion, Courts Have Allowed a Partnership to be Represented by a Partner Who is Not an Attorney.—A few courts have allowed a partner who is not an attorney to represent a partnership in legal pro-

\textsuperscript{16} \textit{Turkey Point}, 666 A.2d at 908.
\textsuperscript{18} \textit{id.} at *1.
\textsuperscript{19} \textit{id.}
ceedings. In *United States v. Reeves*, the issue before the court of appeals was whether Jefferson, the "managing" partner, could file an answer to a complaint. When the government moved to strike the pleading because Jefferson was not an attorney, the district court granted the motion. Jefferson then made a motion to be substituted for the partnership because he had a one-half interest in the partnership. This motion was denied and a default judgment was entered against Jefferson.

Jefferson then appealed on behalf of himself and the partnership. On appeal, the court looked at the Alaska partnership statute and determined that because, according to its reading of the partnership statute, "each partner has a specific right in partnership property," it "follow[ed] that, in pleading [the partnership's] defense against the foreclosure of real estate in which that partnership claimed an interest, Jefferson, as a member of that partnership, was pleading his own case."

The district court also looked at 28 U.S.C. § 1654, which gives parties the right to "plead and conduct their own cases personally or by counsel", and decided that this section of the United States Code does not give the District Court the right to forbid a party, like Jefferson, "from pleading and conducting his own case." The representation of the partnership by Jefferson was therefore permitted.

In *Watt, Tieder, Killian & Hoffar v. United States Fidelity & Guaranty Co.*, the *Reeves* decision was cited with approval by the Colorado court. In this case, a law partnership was held in contempt of court by the trial court when it appeared in Colorado court through an attorney not licensed in the state. The law firm was therefore in contempt because "a partnership, like a corporation, is an artificial entity

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21. 431 F.2d 1187 (9th Cir. 1970).
22. See id. at 1188.
23. See id.
24. See id.
25. See id. at 1188.
27. Id.
28. Id.
29. Id. at 1189.
30. See id.
32. See id. at 174.
33. See id. at 171.
created by law" and cannot appear pro se.\textsuperscript{34} When plaintiff filed a complaint in Colorado court, it therefore engaged in the unauthorized practice of law, which is prohibited by Colorado law.\textsuperscript{35}

On appeal, the court looked at the nature of a partnership under Virginia and Colorado law.\textsuperscript{36} The court of appeals held that plaintiffs did not engage in the unauthorized practice of law by filing a pleading in a court in which it was not licensed to practice. This conclusion was reached by looking at the rationale behind the law prohibiting the unauthorized practice of law.\textsuperscript{37}

After looking at the nature of a partnership under Colorado law and comparing the instant case to situations that do not implicate the unauthorized practice of law,\textsuperscript{38} the court concluded that "a general partnership is not a separate legal entity. It is, rather, an association of persons, either natural or artificial."\textsuperscript{39} Because any of the partners could have appeared on his own behalf since his personal liability was implicated by the law firm's actions, the court concluded that "all of the partners may, collectively, represent the entire association."\textsuperscript{40}

The Reeves case, which was criticized time and again, was recognized as overruled in Licht v. American West Airlines\textsuperscript{41} after the decision by the United States Supreme Court in Rowland v. California Men's Colony, Unit II Men's Advisory Council\textsuperscript{42} which held that a partnership

\begin{itemize}
\item \textsuperscript{34} Id. at 172.
\item \textsuperscript{35} See id.
\item \textsuperscript{36} See Watt, 847 P.2d at 173.
\item \textsuperscript{37} See Turkey Point Property Owners' Ass'n v. Anderson, 666 A.2d 904, 908 (Md. Ct. Spec. App. 1995) ("The goal of the prohibition against unauthorized practice of law is to protect the public from being preyed upon by those not competent to practice law—from incompetent, unethical, or irresponsible representation.").
\item \textsuperscript{38} See Watt, 847 P.2d at 172, 173:
\begin{quote}
However, not all appearances in a representative capacity constitute the practice of law. If the nature of the proceedings is neither judicial or quasi judicial, such an appearance is not improper. . . . Further, there exist certain circumstances in which "no legal principle is involved and the subject matter of the hearing has a value or represents an amount insufficient to warrant the employment of an attorney," and in which the supreme court has granted permission for lay representation.
\end{quote}
\item \textsuperscript{39} See id. at 175.
\item \textsuperscript{40} See id.
\item \textsuperscript{41} Licht v. American West Airlines, 40 F.3d 1058 (9th Cir. 1994).
\item \textsuperscript{42} 506 U.S. 194, 199 (1993).
\end{itemize}
can not appear in Federal Court except through a licensed attorney.

2. Most Courts Do Not Allow Partnerships to Be Represented by Nonattorney Partners.—Although the Reeves Court allowed the partner to represent the partnership in legal proceedings, the Reeves court was highly criticized before it was overruled. Most courts have held that the same rules that apply to corporations regarding pro se representation also apply to partnerships and other associations.43 The rationale behind the rule applies to partnerships as well as corporations.44 As the Court in Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut43 stated

Thus, the rationale for the rule in corporate cases applies equally to all artificial entities. Our federal courts have earlier articulated their reason behind this requirement: "[T]he conduct of litigation by a nonlawyer creates unusual burdens not only for the party he repre-

43. See Long v. Delarosa, No. SPM-941294880, 1995 WL 50275 (Conn. Super. Ct., Jan. 30, 1995) ("It is well established, for example, that a non-attorney officer of a corporation may not file such an appearance on the corporation's behalf. [citations omitted]. Nor may a general partner who is not an attorney file an pro se appearance on behalf of the partnership."); see also State v. Settle, 523 A.2d 124, 129 (N.H. 1987):

Hence we conclude that the legislature's "proper person" alternative to the general rule requiring professional representation before the courts was intended to be, and must remain, inapplicable to corporations. Its inapplicability to unincorporated associations is equally clear. . . . Such an association is merely a group of individuals voluntarily joined together to further a common purpose, [citations omitted], and it is generally without legal existence or significance apart from its constituent members. . . . [I]ts very nature as a collection of individuals necessarily and by definition precludes its appearance pro se by one Individual.


Any person who is not an attorney is prohibited from practicing law, except that any person may practice law, or enter a pleading in any court of this state "in his own cause." The authorization to appear pro se is limited to representing one's own cause, and does not permit individuals to appear pro se in a representative capacity. [citations omitted]. "When a partner attempts to represent the partnership, he is representing more than just himself." The plaintiff is representing the partnership pro se. This is improper, and the court dismisses the action on this additional ground.

sents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative. In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney’s ethical responsibilities, e.g., to avoid litigating unfounded or vexatious claims.46

As always, courts are seeking to protect the rights of the litigants and the orderliness of the proceedings.

In Debry v. Cascade Enterprises,47 a construction company organized as a partnership was sued both as a partnership and through each individual member. When it became apparent that the litigation would be protracted, the partners decided it would be in the best interest of the partnership to proceed without a lawyer in order to minimize cost.48 The trial court ruled that the partners could not represent the partnership itself, but that they could each represent their own individual interests.49 This was upheld by the court of appeals, which determined that each partner could represent his own individual interest in the partnership. The individual partners could not, however, represent the partnership as an entity.50

In State v. Settle,51 an individual attempted to represent an unincorporated association of which he was an officer.52 He was not an attorney licensed in the state of New Hampshire, nor was he licensed in any state.53 The court refused to allow him to represent the association, and dismissed both the decision and reasoning of the Reeves court.54

46. Id. at 65.
47. 879 P.2d 1353 (Utah 1996).
48. See id. at 1362.
49. See id.
50. See id. at 1362.
52. See id. at 125.
53. See id. at 126.
54. See id. at 129:

Although the court [in Reeves] reasoned that in representing the partnership he was representing his own interest, this begs the relevant question, which is whether the partner was representing any one else at the same time. Because he was necessarily representing the other partners as well, the Reeves court was mistaken in its implicit conclusion that the one partner’s appearance effected nothing more than personal representation. Reeves was an analytical sport, without persuasive claim to be followed.
The Reeves decision was also criticized in Expressway Associates.\textsuperscript{55} In Expressway Associates, the partnership cited the Reeves decision in support of its argument that it could be represented by a partner in court.\textsuperscript{56} The court rejected this argument by agreeing with another court’s holding that: "[w]e are not persuaded by the reasoning and conclusions advanced in Reeves and its holding appears to be in conflict with other pronouncements in that circuit."\textsuperscript{57}

3. The Rationale Behind the Prohibition Applies to Nonlaw Practicing Partnerships That Include Attorneys as Partners.—Just as courts have regularly held that a lay person can not represent the interests in a partnership, the same should ring true for a lay person who is in a partnership with attorneys. The rationale would be the same: the rules against pro se representation of a partnership or corporation are established to protect the legal profession, the legal process, and the litigants.\textsuperscript{58} Just because a person is involved in a partnership that has lawyers as members should not change the rules.

Although Reeves has been overruled, the strength of the criticism of the case and the strong language used by courts in prohibiting what it allowed leads to only one conclusion: a partnership, no matter what profession makes up its membership, can not be represented in legal proceedings by anyone other than a licensed attorney.

\textit{See also} Axiotis v. Posta, No. CV 950328725S, 1996 WL 107049, at *3:

Any person who is not an attorney is prohibited from practicing law, except that any person may practice law, or pleading in any court of this state "in his own cause." The authorization to appear pro se is limited to representing one’s own cause, and does not permit individuals to appear pro se in a representative capacity. [citations omitted]. "When a partner attempts to represent the partnership, he is representing more than just himself." The plaintiff is representing the partnership pro se. This is improper, and the court dismisses the action on this additional ground.

\textsuperscript{55} Expressway Associates II v. Friendly Ice Cream Corp. of Conn., 642 A.2d 62 (Conn. Ct. App. 1994).
\textsuperscript{56} See id. at 65.
\textsuperscript{57} See id. at 66.
\textsuperscript{58} See Expressway Associates at 62 (rationale behind prohibition is the great burden placed on all participants).
III. THE REPRESENTATION OF A PARTNERSHIP BY A NONATTORNEY PARTNER HAS BEEN HELD TO CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW

Even if a court allows a nonlawyer to represent a partnership, there is still the danger that the lay person will engage in the unauthorized practice of law. The unauthorized practice of law is prohibited by Model Rule of Professional Conduct 5.5, and statutorily in all states. The practice of law has been defined in various ways by different courts. The court in Watt defined the practice of law as "one who 'acts in a representative capacity in practicing, enforcing, or defending the legal rights and duties of another.'" This definition is expanded by State v. Hunt.

"The term 'practice of law' includes not only the doing or performing of services in a court of justice, in a matter pending therein, throughout its various stages, and in conformity with the adopted rules of procedure, but in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured." [citations omitted]. . . . "[T]he selection and completing of form legal documents, or the drafting of such documents, including deeds, mortgages, deeds of trust, promissory notes and agreements modifying these agreements constitutes the practice of law." [citations omitted]. "Also, when 'one determines for the parties the kinds of legal documents they should execute to effect their purpose, such is the practice of law.'"

59. Model Rule of Professional Conduct 5.5 provides that:
A lawyer shall not:
(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.5 (1994).
61. Id. at 172.
63. Id. at 99-100 (quoting In re Droker, 370 P.2d 242 (Wash. 1962).
A. Courts Will Not Allow the Unauthorized Practice of Law

Courts react strongly to the unauthorized practice of law, frequently dismissing cases where it occurs. This was the action taken by the court in Turkey Point. Because the Property Owners’ Association was not represented by an attorney as required by Maryland rules, the court found that this was the unauthorized practice of law and dismissed the petition.

1. Representation of a Corporation By Anyone Other Than An Attorney Is the Unauthorized Practice of Law.—When the president of the corporation filed the petition for review and represented the association in court, she was engaging in the practice of law. She was not a licensed attorney and was therefore engaging in the unauthorized practice of law. This was also a violation of Rule 2-131(a)(2), which requires a corporation to be represented by an attorney in circuit court. The attitude of courts directly relates to the premise underlying the prohibition of the practice of law by persons not duly licensed: the prohibition exists to protect the public and to protect the professionalism of attorneys.

When determining if a person has engaged in the unauthorized practice of law, it is the nature of the service that is being performed with which courts are concerned, not the status of the person performing them. What is permissible for a person to do for himself when appearing pro se is prohibited as the unauthorized practice of law by someone representing another person or an entity.

2. Representation of a Partnership by a Nonattorney is the Unauthorized Practice of Law.—Courts have consistently applied the same stan-

65. “Rule 2-131(a)(2) expressly requires that a corporation be represented by counsel unless otherwise provided by rule or statute.” Id. at 908.
66. See id. at 719-720.
67. See id. at 907.
68. See id.
69. See Turkey Point, 666 A.2d at 907.
71. See id.
dards to corporations and partnerships with regard to pro se representation, and it logically follows that the same standards would apply to the unauthorized practice of law when a member of an association attempts to represent the association pro se.

When a partner acts for the partnership he is not just acting for himself—he could either be seen as acting for the other partners or for the partnership as an entity, both of which are clearly prohibited in most courts. Because a partnership is, by definition, an association of more than one person, a partner who represents a partnership in a legal proceeding is "practicing, enforcing, or defending the legal rights and duties of another," the "another" being the other partners.72

In Settle, the trial court held that a permanent injunction that had been issued against Settle prohibiting him from the unauthorized practice of law did not prohibit him from representing an unincorporated association of which he was an officer.73 This was appealed, and the trial court's reading of the scope of the injunction was held erroneous.74

The Court believed that the injunction, as interpreted by the trial court, would allow for the unauthorized practice of law, which is statutorily prohibited in New Hampshire. There is no exception in the rule that would allow Settle to appear as the trial court would have allowed.75 The concerns underlying the prohibition of unauthorized practice of law are practical competence and ethical responsibility.76 These concerns relate not only to the corporation or partnership that is represented pro se, but also to the concern that the opponent and the public as a whole could suffer as a result of unskilled representation.77

If a partner in a law firm attempts to represent the partnership in a legal proceeding, he is representing the legal rights of the other partners and the partnership entity itself. The rules against the unauthorized practice of law prohibit a person from doing almost anything in a legal proceeding unless he is doing it while representing himself pro se. Therefore

72. Id.
74. See id.
75. See id. at 127.
76. See id. at 128.
77. See id. at 129.
a partner is engaging in the unauthorized practice of law if he does anything on behalf of the partnership that could be seen as the practice of law, regardless of whether the partnership has attorneys as partners.

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