Representing a Corporation in State Court: Do You Need a Lawyer?

by Patrick M. Kinnally

For those of us who represent corporations in state trial courts, it has seemed customary that, if a corporation wishes to litigate or defend a claim, that entity can only appear by counsel.

In federal court, the rule of corporate representation by a lawyer is clear. A corporation may only appear in federal courts through a licensed attorney. *Rowland v. California Men's Colony,* 506 U.S. 194 (1993). That has been the federal rule for over 275 years. *Osborn v. Bank of the United States,* 9 Wheat. 738 (1824).

Unless you are in a small claims state trial court, however, the Illinois rule as to corporate representation is ambiguous. *Downtown Disposal Services, Inc. vs. The City of Chicago*, 407 Ill. App.3d 822, 943 N.E.2d 185 (1st Dist. 2011)("*Downtown*").

As to small claims, Supreme Court Rule 282 says:

> Representation of Corporations. No corporation may appear as claimant, assignee, subrogee or counterclaimant in a small claims proceeding, unless represented by counsel. When the amount claimed does not exceed the jurisdictional limit for small claims, a corporation may defend as a defendant any small claims proceeding in any court of this State through any officer, director, manager, department manager or supervisor of the corporation, as though such corporation were appearing in its proper person. For the purposes of this rule, the term "officer" means the president, vice-president, registered agent or other person vested with the responsibility of managing the affairs of the corporation.

This rule is unmistakable. Basically, it says in cases less than $10,000, a corporation may appear through an officer or a person responsible for managing the affairs of a corporation in order to defend an action.

So what happens in other types of civil litigation where the amount in controversy exceeds $10,000, is an ordinance violation, or a law case? The answer is muddied by conflicting precedent. (Compare, *Siakpere v. City of Chicago,* 374 Ill.App.3d 1079 (1st Dist. 2007)("Siakpere") with *Moushon v. Moushon,* 147 Ill.App.3d 140 (3d Dist. 1986)[corporate president representation by non-lawyer permitted].

Because of the omnipresence of administrative courts in lieu of many traditional circuit court settings, the issue is becoming more commonplace. Can a corporation appear without a lawyer at an unemployment hearing? Yes. Can a corporation appear at a zoning hearing? Yes. How about a tax appeal hearing or in an immigration case? Probably, if the administrative rules for that tribunal permit it.

Downtown is a reflection of the trend where a corporation engages in litigation without counsel at an administrative hearing. There, Downtown, a corporation, appeared in an administrative court to contest certain default judgments entered by the admini-strative law judge for failure to comply with city ordinances. A fine of $1,500 plus costs had been entered against Downtown. Downtown moved to set aside the judgments by its officer, Van Tholen, a non-attorney, alleging improper notice. The administrative law judge denied Downtown and Van Tholen's motion to set aside the defaults. Van Tholen then filed *pro se* complaints seeking administrative review in the circuit court.

The city moved to dismiss the complaints arguing that Van Tholen could not represent the corporation since he was not an attorney. The city argued that a corporation can only appear by an attorney at all legal proceedings, including the filing of pleadings with the court. And, because Downtown had filed its complaint for administrative review through Van Tholen, that complaint was null and void, even though Downtown was later represented by an attorney. The latter is called the "nullity rule." See, *Santiago v. E.W. Bliss Co.,* 406 Ill.App.3d 449, 941 N.E.2d 275 (1st Dist. 2010)(Petition for Leave to Appeal Allowed Mar. 30,

2011, No. 111792)

By the time the matter was called for hearing, Downtown had hired a lawyer who moved to amend the administrative complaints filed by Downtown and also moved to dismiss the city's original ordinance violation complaints since they were signed by a non-attorney and the city was also a corporation, albeit a municipal one. The trial court granted the city's motion to dismiss and denied Downtown's motion to dismiss.

Justice Lavin acknowledged that a different First District panel agreed with the trial court in dismissing an administrative complaint involving an ordinance fine in exactly the same circumstances, finding the complaints filed by a non-lawyer for a corporation he owned were "void ab initio." (*Siakpere, supra.)* However, the court was unpersuaded by *Siakpere's* analysis of the nullity rule.

First, the court looked at *Ford Motor Credit Company v. Sperry,* 214 Ill.2d 371 (2005), to determine whether the filing by Van Tholen of the administrative review complaints was void. In *Ford Motor,* the issue was whether Ford properly obtained a judgment for attorney's fees against Sperry where the attorney who was representing Ford had let her law firm's registration with the Supreme Court lapse (S.Ct. R. 721(c)); and, because she was not registered to practice law, the trial court was without authority to award her and her client an award of attorney's fees. The Supreme Court said the requirement of a lawyer's registration fee as a professional corporation was a regulation that permitted lawyers to organize their law firms as corporations if they chose to do so upon payment of a fee to the Supreme Court. The court held this was not the unauthorized practice of law and stated:

> . . .When unlicensed individuals engage in the practice of law, the public is at risk of harm. In contrast, when a law firm fails to comply with the registration requirement in our rule 721(c), it is the non-complying firm that is harmed, not the public. . . .This reality further underscores that the registration requirement in Rule 721(c) was not enacted to safeguard the public welfare but to benefit those law firms seeking the tax and limited liability advantages of incorporation. . .

In reversing the appellate and trial courts, the Supreme Court declined to enforce the nullity rule.

The *Downtown* panel also discussed *Applebaum v. Rush University Medical Center,* 231 Ill.2d 429 (2008). The issue in *Appelbaum* was whether a lawyer who was on inactive status could file a *pro se* complaint for wrongful death on behalf of an estate (his father) and not run afoul of the nullity rule. Again, the court held that, even though the attorney who filed the complaint had not complied with Supreme Court Rule 756 as to being in "active" status, he was not engaged in the unauthorized practice of law. Too, the Supreme Court opined the purpose behind Rule 756 was not to protect the public from unlicensed or incompetent individuals but was an administrative one to collect fees based on an attorney's registration status.

It has long been the common law in Illinois that a complaint drafted by a non-attorney for a corporation results in the unauthorized practice of law. And because such representation is unauthorized, the pleading is given no efficacy and is a nullity. *Housing Authority of Cook v. Tonsul,* 115 Ill.App.3d 739, 740 (1st. Dist. 1983). See also, *Edwards v. City of Henry,* 385 Ill.App.3d 1026 (3rd Dist. 2008).

Contrary precedent exists where the nullity rule has been ignored, but generally these opinions have occurred with respect to individuals who seek to represent a family member or family estate (*Applebaum*; *Pratt-Holdampf v. Trinity Medical Center,* 338 Ill.App.3d 1079 (3rd Dist. 2003)(medical negligence)) or are unknowingly represented by an unlicensed attorney (*Janiczek v. Dover Management Co.,*134 Ill.App.3d 543 (1st Dist. 1985)).

Unfortunately, it appears the appellate court seems to confuse the latter with the former. It seems the Supreme Court has really never addressed the unauthorized practice of law by corporate officers, although in *dicta*, it appeared to approve of it. *See*, *Bolton v. Progressive Insurance Co.,* 44 Ill.2d 392 (1970).

The *Downtown* tribunal reversed the trial court's mechanistic application of the nullity rule. This is because Van Tholen was told by the administrative law judge that he could appeal and how to file the appeal, and Von Tholen did exactly what the administrative law judge told him he had the right to do. Finally, it concluded the city suffered no prejudice from what Van Tholen did and showed no reason how the purposes of imposing the nullity rule were implicated by Van Tholen's conduct.

With units of local governments' seemingly endless love affair with administrative tribunals, issues like those presented in *Downtown* are likely to recur. This is because these tribunals make their own rules, which may or may not comply or be in conflict with Supreme Court Rules or ones enacted by the legislature. For example, in *Adair Architects, Inc. v. Bruggeman,* 346 Ill.App.3d 523 (3rd Dist. 2004)("*Adair*"), a legislative enactment which permitted a corporation to prosecute a small claims complaint was held unconstitutional because it contravened Supreme Court Rule 282(b).

Downtown in some ways is a replay of *Adair*, since the administrative tri-

bunal had a rule which permitted an appeal by a corporation represented by a non-attorney. In cases other than small claims, perhaps the Supreme Court should provide us with some guidance as to what should be a fairly evident proposition.

And perhaps it will now do so. On May 25, the Illinois Supreme Court allowed the Petition for Leave to Appeal filed in *Downtown*. (No. 112040).

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