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ADVISORY OPINION 93-001

The Committee on Unlawful Practice of The West Virginia State Bar has received an inquiry as to whether or not a corporation must be represented by licensed West Virginia counsel in matters pending in both Magistrate Court and Circuit Court. In order to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the court does not exercise any control, only duly licensed persons meeting the qualifications for admission to the bar established by the West Virginia Supreme Court are permitted to practice law in this State. State Bar v. Earley, 109 S.E.2d 420 (W.Va. 1959), and Definition of the Practice of Law, as amended in 1961, Vol. 1, W.Va. Code at 569 through 570. A corporation is not a natural person but is an artificial entity created by law and for that reason, in legal matters, it must act through duly licensed attorneys. State Bar v. Earley, supra. Also see: W.Va. Code §§ 30-2-4 and 30-2-5. Despite the fact that it would appear on its face that corporations cannot be represented by law practitioners in appearances in both Magistrate and Circuit Court, an exception exists in W.Va. Code § 50-4-4a. That Code Section authorizes the use of lay representatives in certain types of actions in Magistrate Court. In particular, W.Va. Code § 50-4-4a provides, in part, that:

Any party to a civil action in a magistrate court may appear and conduct such action in person, by agent or by attorney. Appearance by an agent or attorney shall have the same effect as appearance by the party represented, and the appearance by an agent shall not constitute the unlawful practice of law. ...

In the case of State ex rel Frieson v. Isner, 285 S.E.2d 641 (W.Va. 1981), the West Virginia Supreme Court upheld the constitutionality of this particular Code Section. In upholding the constitutionality of this Code Section, the court held that:

A fair reading of article eight of our Constitution reveals that the legislature and the judiciary were to act in concert in establishing the magistrate court system. With respect to their civil jurisdiction, the magistrate courts were intended to be "people's courts", the purpose of which was to provide the ordinary person involved in small claims litigation with an accessible forum for resolution of disputes, unburdened by the expense and delay usually associated with litigation... It was anticipated that the informal nature of the proceedings in magistrate courts would encourage individuals to prosecute their own claims and, thus, avoid the necessity and expense of hiring a lawyer. W.Va. Code § 50-4-4a furthers the goal by permitting the casual appearance, not for pay, by lay men in a representative capacity as a form of neighborly or kindred accommodation. It anticipates an isolated or casual appearance by a nonlawyer friend or relative of a party to proceedings in magistrate courts for the purpose of assisting such party in representing himself in the litigation. The statute does not purport to authorize laymen to represent parties in magistrate court on a regular basis or to engage in such activity as a business or for pay...

[t]he clear purpose and intent of the statute is to encourage parties to civil litigation in magistrate court to appear on their own behalf as a means of effecting a speedy and efficient

resolution of small claims. Appearance of a party in magistrate court by lay agent is authorized only when such appearance is an incident of the party's desire to appear pro se.

Based upon W.Va. Code § 50-4-4a, and the West Virginia Supreme Court decision of State ex rel Frieson v. Isner, supra, the Committee on Unlawful Practice is of the opinion that a corporation is authorized to appear in Magistrate Court through the use of lay representatives and the appearance of such lay representatives does not constitute the unlawful practice of law. So long as the lay representative does not appear in Magistrate Court on a regular basis, or engage in such activity as a business or for direct compensation, no violation of the provisions dealing with the unlawful practice of law are violated. The Committee is further of the opinion that no such exception dealing with the use of lay representatives exists for appearances in the Circuit Courts of the State of West Virginia and, therefore, a corporation must be represented by counsel in appearances in Circuit Court.

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