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# May a Corporation Act as Its Own Attorney?

Timothy G. Cotner\*

THE QUESTION INVOLVED here is the right of a "person," not an attorney, to bring action or defend in a court of law.<sup>1</sup> If a natural person may represent himself, why cannot a corporation choose to represent itself in court without the aid of an attorney? The question is posed with the thought in mind that in the eyes of the law a corporation is a legal entity<sup>2</sup> and, therefore, should be permitted to appear in state and federal courts solely through the representation of an agent. This kind of a court appearance, whether by a natural person or by a corporation, is referred to as an appearance in *propria persona*.<sup>3</sup>

## Common Law and Majority View

A recent Illinois decision, *Remole Soil Service, Inc. v. Benson*,<sup>4</sup> has reiterated the view that corporations cannot appear in court in *propria persona*,<sup>5</sup> nor may a layman in charge of a corporation take assignments of the corporation's claims and appear *pro se*<sup>6</sup> in actions brought thereon without complying with requirements for admission to the bar.<sup>7</sup> The traditional rationale for the view that only an attorney may represent a corporation in court is that a corporation is an artificial person created by law and, being such, cannot act as a natural person in presenting its own case.<sup>8</sup> It must be admitted that a corporation cannot appear by any means other than by an agent and thus it is impossible for a corporation to appear personally in

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<sup>1</sup> *Clark v. Austin*, 340 Mo. 467, 101 S.W. 2d 977 (1937); *Abernethy v. Burns*, 206 N. C. 370, 173 S. E. 899 (1934); 63 U. S. Stat. 103 (1949); 28 U. S. C. Sec. 1654 (1964).

<sup>2</sup> 1 Oleck, *Modern Corporation Law*, ch. 2 (1958, with 1965 suppl.); *Paradise v. Nowlin*, 86 Cal. App. 2d 897, 195 P.2d 867 (1948).

<sup>3</sup> *Black*, *Law Dictionary* 899 (4th Ed. 1951).

<sup>4</sup> 68 Ill. App. 2d 234, 215 N. E. 2d 678 (1966). The court held that where a corporation obtained judgment in small claims division of county circuit court in a suit initiated and tried by the corporation's office manager, an unlicensed attorney, judgment should be vacated and suit dismissed at corporation's cost.

<sup>5</sup> *Osborn v. Bank of U. S.*, 9 Wheat. 738 (1824); *Mullin-Johnson Co. v. Penn. Mut. Life Insurance Co.*, 9 F. Supp. 175 (N. D. Cal. 1934). See generally, 9 *Fletcher*, *Cyclopedia Corporations*, 323, Sec. 4463 (Rev. Ed. 1964).

<sup>6</sup> *Black*, *op. cit. supra* n. 3, at 1364; meaning to appear for himself.

<sup>7</sup> *Biggs v. Schwalge*, 341 Ill. App. 268, 93 N. E. 2d 87 (1950); *People ex rel. Chicago Bar Ass'n. v. Tinkoff*, 399 Ill. 282, 77 N. E. 2d 693 (1948).

<sup>8</sup> *Paradise v. Nowlin*, *supra* n. 2. See also Note, *Appointment of Counsel for a Defaulting Corporation in a Criminal Proceeding*, 1960 *Duke L. J.* 649 (1960.)

court.<sup>9</sup> This leads to the conclusion that a natural person can appear in *propria persona* while the same result is impossible for a corporation because a corporation can act only through agents.<sup>10</sup> The logical result then would be the following: if a natural person chooses to represent himself in court, he may do so; but should he decide to be represented by an agent, the agent must be a duly licensed attorney admitted to the bar of that particular jurisdiction. Now as for the corporation: corporations can only be represented and can only act through agents; a corporation cannot represent itself, therefore it must appear in court through the person of a duly qualified attorney. This does follow logic, but what seems to be missing at this point is the real, compelling answer to the question—Why? Why cannot a corporation appear through the agency of one who is not an attorney?

As early as 1868, in *Nixon, Ellison and Co. v. S. W. Insurance Co.*,<sup>11</sup> the court noted that even in Lord Coke's time it was the recognized doctrine that a corporation aggregate could not appear in person in an action.<sup>12</sup> A New York case<sup>13</sup> propounded the theory that corporations cannot appear in their own person but only through the agency of a duly licensed attorney because corporations have always been subject to various limitations by reason of their origin and because of numerous statutory controls governing their activities. In *Heiskell v. Mozie*,<sup>14</sup> the court expressed its sentiments in this manner:

While, therefore, the right to manage one's own cause personally is preserved and secured in all courts, federal and state, the right has never been enlarged to include—by appointment or substitution—an agent. The question is whether

<sup>9</sup> *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 P. 718 (1923); *New Jersey Photo Engraving Co. v. Carl Schonert & Sons*, 95 N. J. Eq. 12, 122 A. 307 (1923); *Nispel v. Western Union R. R.*, 64 Ill. 311 (1872); *Kankakee Drainage Dist. v. Commissioners*, 29 Ill. App. 86 (1887); *Clark v. Austin*, *supra* n. 1; *Black and White Operating Co. v. Grosbart*, 107 N. J. L. 63, 151 A. 630 (1930); *Culpeper Nat'l. Bank v. Tidewater Imp. Co.*, 119 Va. 73, 89 S. E. 118 (1916); *Heiskell v. Mozie*, 82 F. 2d 861 (D. C. 1936); *MacNeil v. Hearst Corp.*, 160 F. Supp. 157 (D. C. Del. 1958); *Brandstein v. White Lamps, Inc.*, 20 F. Supp. 369 (S. D. N. Y. 1937); *Paradise v. Nowlin*, *supra* n. 2.

<sup>10</sup> *Clark v. Austin*, *supra* n. 1. The court held: a natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity, it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.

<sup>11</sup> 47 Ill. 444 (1868).

<sup>12</sup> *Id.* at 446.

<sup>13</sup> *Aberdeen Bindery v. Eastern States Printing & Publishing Co.*, 166 Misc. 904, 3 N. Y. S. 2d 419 (1938).

<sup>14</sup> *Supra* n. 9, at 863.

the person offering to conduct the litigation is the real party in interest. To determine this, courts look through the shadow to the substance.

Most cases that have ruled on this question lay emphasis on the fact that corporations are artificial persons and that this fact precludes a corporate appearance by anyone other than an attorney. It was pointed out in the *New Jersey Photo Engraving* case<sup>15</sup> that by permissive statute a corporation could be an executor just as a natural person may be a lawyer, but not every natural person may be a lawyer, so why should it be that corporations merely because they are in existence may be permitted to appear in *propria persona*? Consequently, a corporation can only act by means of a solicitor, as only members of the bar have audience in the courts.<sup>16</sup>

In *MacNeil v. Hearst Corp.*<sup>17</sup> the corporate plaintiff attempted to prosecute a civil action by its corporate officers alone. The federal court did not allow the action, following the rationale that corporations can act only through agents and that such agents must be attorneys at law. In dismissing the action the court introduced a new approach. It mentioned the necessity of a court having control<sup>18</sup> over those representing a corporation in court. If non-lawyer agents were allowed to represent their corporations, what control would the court have over them? These agents could appear freely and without any qualifications as to character and background.<sup>19</sup> That this activity would result in the "unauthorized practice of law" was brought out in a South Carolina case.<sup>20</sup> The court stated that a corporation cannot appear in *propria persona* because courts cannot permit a representative or employee of a corporation to engage in the unauthorized practice of law based on the theory that the corporation is thus acting for itself. The corporation in this instance is presupposing itself to have the rights of a natural person.

The subject is treated in a succinct manner by most authorities. One simply declares that a party to an action may appear in his own person or by attorney, unless the person is a corporation, in such case it may appear in court only by attorney.<sup>21</sup> Another touches on the aspect of an individual pre-

<sup>15</sup> *New Jersey Photo Engraving Co. v. Carl Schonert & Sons*, *supra* n. 9.

<sup>16</sup> *Ibid.*

<sup>17</sup> 160 F. Supp. 157 (D. C. Del. 1958).

<sup>18</sup> *Ibid.*

<sup>19</sup> See *People ex rel. Andrews v. Hassakis*, 6 Ill. 2d 463, 129 N. E. 2d 9 (1955). The license to practice law is a privilege granted only by the Supreme Court and can only be delimited, restricted or taken away by that court or by statutory enactment.

<sup>20</sup> *State ex rel. Daniel v. Wells*, 191 S. C. 468, 5 S. E. 2d 181 (1939).

<sup>21</sup> 7 Am. Jur. 2d, Attorneys at Law, Sec. 6 (2d Ed. 1963).

senting his own case in court and even preparing the necessary legal instruments for his cause without committing unlawful practice of law, but, unless expressly allowed by statute, a corporation that attempts the same through a lay officer or employee may find itself and the layman guilty of illegally practicing law.<sup>22</sup> If this were the case, the proceedings in a suit by such a person not entitled to practice are a nullity and the action may be dismissed.<sup>23</sup> If a judgment has been rendered, it is void and will be reversed.<sup>24</sup> In Connecticut, a statute<sup>25</sup> specifies that since a corporation cannot practice law directly, it cannot do so indirectly through its officers. A 1957 Connecticut case, *State Bar Association of Conn. v. Conn. Bank and Trust Co.*,<sup>26</sup> recognized the importance of restricting the practice of law to natural persons licensed on the basis of character and competence so as to protect the public from persons with a lack of knowledge, skill, and integrity.

Where a corporate defendant already in the midst of court proceedings filed with the court its consent to the withdrawal of its attorneys, the court denied the withdrawal even though the defendant may have been willing to assume representation on its own behalf. Being a corporation, it is without capacity to either represent others or itself.<sup>27</sup> In a famous criminal case,<sup>28</sup> where the court was applying Federal Rules of Criminal Procedure, the common law doctrine was adhered to, whereby corporations may not appear except by counsel, and further, that a judgment of conviction of a corporation after a trial where it had not appeared by counsel would be invalid.<sup>29</sup>

But the cases have not always held such a hard and fast line. In the early case of *McLaughlin v. Gilmore*,<sup>30</sup> it was determined that laymen might appear as agents for a party in Justice of the Peace courts. Forty-six years later an Illinois court overruled the *McLaughlin* case, holding that such services rendered for another could not be rendered in a court of record

<sup>22</sup> 157 A. L. R. 284 (1945).

<sup>23</sup> 7 C. J. S. 725 (1937); *Bennie v. Triangle Ranch Co.*, *supra* n. 9; *Mullin-Johnson Co. v. Penn. Mut. Life Ins. Co.*, *supra* n. 5.

<sup>24</sup> 7 C. J. S. 725 (1937).

<sup>25</sup> C. G. S. A. Secs. 51-88 (1949).

<sup>26</sup> 20 Conn. Supp. 248, 131 A. 2d 646 (1957). *Contra*, *American Sand & Gravel Inc. v. Clark & Fray Const. Co.*, 2 Conn. Cir. 284, 198 A. 2d 68 (1963).

<sup>27</sup> *Laskowitz v. Shellenberger*, 107 F. Supp. 397 (S. D. Cal. 1952).

<sup>28</sup> *United States v. Crosby*, 24 F. R. D. 15 (S. D. N. Y. 1959).

<sup>29</sup> *Ibid.*, citing *Osborn v. U. S. Bank*, *supra* n. 5; *Brandstein v. White Lamps, Inc.*, *supra* n. 9.

<sup>30</sup> 1 Ill. App. 563 (1878). See also *Burgess v. Federated Credit Service, Inc.*, 148 Col. 8, 365 P. 2d 264 (1961), holding that suits in courts which are not courts of record need not be carried on by licensed attorneys. C. R. S. '53, 79-5-17.

without a license to practice law.<sup>31</sup> A Utah decision noted that some jurisdictions permit corporations to appear in small claims courts without an attorney and allow representation by agent, but concluded that such conduct was not compatible with Utah authority.<sup>32</sup> In a matter where a taxpayer, a natural person, attempted to bring action on behalf of a municipal corporation, the court did not deny that the person had an interest to protect, but resolved the issue by saying the cause of action remains in the corporation and that final relief is for its benefit. While a layman may represent himself in court, he cannot even on a single occasion represent another taxpayer.<sup>33</sup>

As long ago as 1913, in a law review article entitled *Passing of the Legal Profession*,<sup>34</sup> the author was moved to remark that corporations are performing far too many paralegal duties formerly handled by attorneys, and that "the lawyer, as such, is being devoured by his own Frankenstein."<sup>35</sup>

Duties such as title searching, agency duties, etc. are exceptions to the prohibition of corporate professional practice.<sup>36</sup> Earlier in this review the question was asked—Why can't a corporation appear through the agency of one who is not an attorney? It seems to this writer that overpowering answers to this question have not yet been forthcoming. Most of the cases set forth the theory that natural persons may appear in *propria persona*, while corporations, not being natural persons, simply cannot make such an appearance. This reasoning is quite clear, but it leaves rather vague the answer to *why* an *agent* of the corporation cannot appear in its stead. A forceful reply, one that best answers the question and should stand out as a final solution to the problem, is found in a note in the *Brooklyn Law Review*:

To allow the corporation to appear by an agent and say that it is appearing in person would give it an uncalled-for advantage over the individual. . . . Not only would a change in policy create an advantage in favor of the corporation, but it would be a change fraught with dangers. . . . But the

<sup>31</sup> *People v. Hubbard*, 313 Ill. 346, 145 N. E. 93 (1924).

<sup>32</sup> *Tuttle v. Hi-Land Dairyman's Ass'n.*, 10 Utah 2d 195, 350 P. 2d 616 (1960).

<sup>33</sup> *Niklaus v. Abel Construction Co.*, 164 Neb. 842, 83 N. W. 2d 904 (1957).

<sup>34</sup> *Bristol, Passing of the Legal Profession*, 22 Yale L. J. 590 (1913).

<sup>35</sup> *Id.* at 613.

<sup>36</sup> 1 *Oleck, Modern Corporation Law*, 114 (1958, with 1965 suppl.). Title guarantee companies are generally exempted from the rules forbidding corporate practice of law. But their functions are limited to searching and guaranteeing titles, making loans or mortgages, and agency duties, and otherwise they may not practice law. Citing Ohio Rev. Code, Secs. 1735.01-1735.04; *Land Title Abs. & Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N. E. 650 (1934).

corporation with its many agents and extensive litigation would, under a different rule as to personal appearance, be allowed to conduct numerous law suits without the aid of counsel. It might be to the advantage of the corporation to hire people to conduct its litigation who would not be subject to disbarment. The extensive field of corporate litigation would be opened to anybody whether or not admitted to the bar.<sup>37</sup>

### Contra View

Contra opinion is scant; only a small number of reported cases have advocated the appearance of corporations in *propria persona*. The latest and most prominent of these are New York cases and date back to the depression years. This is significant because these courts perhaps were willing to relieve economically depressed corporations of the financial burden of engaging attorneys. The *Sellent-Repent Corp. v. Queens Borough Gas & Elec. Co.*<sup>38</sup> and *A. Victor & Co. v. Sleininger*<sup>39</sup> cases support the contra view but differ as to rationale. In the *Sellent-Repent* case the court said that if a corporation does not go outside its own corporate machinery in performing an act, it is acting in person and upon equal footing with a natural person, including the right to sue in person. The *Victor* case advanced two reasons: (1) a corporation might be too impoverished to employ a lawyer and (2) it might have a claim it believed to be just but could find no lawyer who would accept the case, believing it to be hopeless. A short time later, another New York decision<sup>40</sup> was handed down allowing a corporation to appear without an attorney, citing the *Victor* case as a precedent. Today, with the emerging prevalence of Legal Aid Societies and court-appointed attorneys, this thinking would be quite unlikely.

Where authorized by the New York Civil Practice Act,<sup>41</sup> in *10th St. & 5th Inc. v. Naughton*,<sup>42</sup> the court permitted the signing and verification of the precept and petition by an agent

<sup>37</sup> Note, Appearance of Corporation Without Attorney, 7 Brooklyn L. Rev., 371, 375 (1938).

<sup>38</sup> 160 Misc. 920, 290 N. Y. S. 887 (1936). The *Sellent-Repent* Case cited *La Farge v. Exchange Fire Ins. Co.*, 22 N. Y. 352 (1860) which held: as a corporation acts through the intervention of living agencies, in regard to whom no rule of exclusion exists, it has all the advantage which can arise from the opportunity of producing countervailing testimony, and the parties meet upon terms of far greater equality than the old rule permitted.

<sup>39</sup> 255 App. Div. 673, 9 N. Y. S. 2d 323 (1939).

<sup>40</sup> *Milmoe v. Meyer*, 15 N. Y. S. 2d 899 (1939).

<sup>41</sup> N. Y. C. P. A. Sec. 1414 (6).

<sup>42</sup> 163 Misc. 437, 296 N. Y. S. 952 (1937). In *Meyer v. Sarpy*, 175 So. 2d 387 (La. App. 1965), the court permitted an agent of a corporation to appear because a statute, Act 202 of 1932, did not require the intervention of an attorney.

of a corporate landlord in summary proceedings, but proceeded to profess the common law concerning corporations appearing only by attorney when instituting, prosecuting, or defending any cause in the courts, thus half-heartedly endorsing the *Sellent-Repent* case of the previous year. In *Jardine Estates Inc. v. Koppel*,<sup>43</sup> the court was induced to allow a corporation to appear by agent, because the corporation and the agent were one and the same.

A note in the *Duke Law Journal*<sup>44</sup> stresses the point that no good reason exists for not allowing corporation officers to appear on its behalf. If the officer representing the corporation should feel the need of legal assistance, the corporation would still be at liberty to employ attorneys; and if the corporation is unable to employ counsel, the court would be free to appoint counsel just as in the case of an individual litigant.

Commenting favorably on the *Victor* case, a note in the *University of Pennsylvania Law Review*<sup>45</sup> concludes that "office" work of the lawyer is much more extensive than "court" work and in the hands of unscrupulous people may be more prejudicial to clients and the public than services rendered under the scrutiny of a judge; therefore prevention of a corporate appearance by officer or agent doesn't eradicate any evil. Furthermore, since the courts have the power to regulate those people using the courts, it is submitted that disbarred attorneys acting as agents or officers would quickly find themselves involved in contempt proceedings.

### Conclusion

The *Sellent-Repent* and *Victor* cases have attracted attention only because they are contrary to long established legal thinking, not because they offer a new approach. Without a new approach it seems improbable that corporations can ever attain a status equal to that of a natural person in our courts. And perhaps this is as it should be. A corporation is a creature of the law, and not a human being.

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<sup>43</sup> 24 N. J. 536, 133 A. 2d 1 (1957).

<sup>44</sup> Note, Appointment of Counsel for a Defaulting Corporation in a Criminal Proceeding, *supra* n. 8.

<sup>45</sup> Note, Right of a Corporation to Bring Suit in its Corporate Name without the Aid of an Attorney at Law, 87 U. Pa. L. Rev. 1006 (1939).