

**[J-148-2005]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

LANI G. HARKNESS : No. 112 MAP 2005  
: :  
v. : Appeal from the Order of the  
: Commonwealth Court dated February 3,  
UNEMPLOYMENT COMPENSATION : 2005 at No. 150 C.D. 2004, vacating and  
BOARD OF REVIEW : remanding the Order of the  
: Unemployment Compensation Board of  
MACY'S EAST, INC., INTERVENOR : Review dated January 7, 2004 at Decision  
: No. B-420451; Appeal No. B-03-09-B-  
: 6158.  
: :  
: 867 A.2d 728 (Pa. Cmwlth. 2005)  
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APPEAL OF: MACY'S EAST, INC., : ARGUED: December 7, 2005  
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## DISSENTING OPINION

**MR. JUSTICE EAKIN**

**DECIDED: April 17, 2007**

Because I find the non-employee representative's actions in this matter constituted "practicing law" under Shortz et al. v. Farrell, 193 A. 20 (Pa. 1937), I must dissent.

Shortz held the practice of law included "the appearance on behalf of clients before public tribunals, the application of rules of evidence, the examination and cross-examination of witnesses, and presentation of arguments in order to assist the deciding official in the proper interpretation and enforcement of the law." Harkness v. Unemployment Compensation Board of Review, 867 A.2d 728, 731 (Pa. Cmwlth. 2005) (citing Shortz, at 21). Here, the representative "conducted cross-examination[,] ... made decisions regarding evidentiary matters, and a closing legal argument[,] ... [and] implicitly represented that he had the technical competence to analyze the legal problem faced by the Board, and that he had the requisite character qualifications to act in a representative capacity." Id. These facts support the conclusion the representative performed the function of an attorney and thus was engaged in the practice of law.

At the time of this hearing, a corporation could not be represented by anyone other than licensed counsel; as an artificial entity, a corporation could not represent itself pro se, as a natural person was permitted to do. See Walacavage v. Excell 2000, Inc., 480 A.2d 281, 283 n.3 & 283-84 (Pa. Super. 1984) (although Pennsylvania Supreme Court has not directly addressed issue, law is clear that corporation may appear in court only through attorney at law admitted to practice before court). This was because "a corporation can do no act except through its agents and ... such agents representing the corporation in Court must be attorneys at law who have been admitted

to practice, are officers of the court and subject to its control.” Id., at 284 (quoting MacNeil v. Hearst Corp., 160 F. Supp. 157, 159 (D. Del. 1958)).

After the hearing in this case, however, 43 P.S. § 774 was enacted, providing any party to an unemployment compensation proceeding “may be represented by an attorney or other representative.” Id. (emphasis added). This recognized that corporations, big or small, should be allowed to present their case just as would a natural person. The question is whether “other representative” was meant to include officers and employees of the corporation itself (putting it on an equal footing with natural persons), or whether it was meant to include hiring non-lawyer representatives.

The General Assembly may enact legislation affecting representation in a legal proceeding, but it remains the exclusive province of this Court to regulate the practice of law, including defining what constitutes such practice. See Pa. Const. art. V, § 10(c); Gmerek v. State Ethics Commission, 751 A.2d 1241, 1254 (Pa. Cmwlth. 2000), aff’d, 807 A.2d 812 (Pa. 2002) (per curiam) (power to regulate and define what constitutes practice of law is vested in judiciary, and not in executive or legislative branches of government). I would hold the statute’s phrase “other representative” encompasses a corporate officer or member of the corporation’s own staff, but does not include a non-employee representative, hired only for the purpose of representation at hearings where the legal rights of the parties are determined.

It is entirely appropriate for a corporation to send an officer or employee to represent its interests. Just as with a claimant’s right to appear pro se, so may a corporate entity appear “pro se.” Indeed, it would be unfair, if not a constitutional denial of equal protection, to prohibit it from doing so. Particularly with small business corporations, it is economically imperative that management be allowed to appear.

However, when the corporation hires outside representation, that representation must be evaluated based on its services -- here, they amount to legal representation.

In magisterial district judge proceedings, individuals may proceed pro se, with counsel, or by a representative with personal knowledge of the matter, see Pa.R.C.P.M.D.J. 207(A)(1), and corporations may now be represented “by an attorney at law, by an officer of the corporation, ... or by an employee or authorized agent of the corporation, ... with personal knowledge of the subject matter of the litigation and written authorization from an officer of the corporation....” Id., 207(A)(3) (emphasis added). The note to the Rule provides: “This rule is intended to permit a non-lawyer representative, employee, or authorized agent to appear on behalf of ... [a] corporation, but not to allow a non-lawyer to establish a business for the purpose of representing others in magisterial district court proceedings.” Pa.R.C.P.M.D.J. 207, note (emphasis added).

If permitting a non-lawyer to establish such a business is undesirable in magisterial proceedings, in which the policy is to keep the procedures “as simple and nontechnical as possible,” id., 210, note, permitting such representation cannot be favored in other legal proceedings. This must include unemployment compensation hearings, regardless of how perfunctory or informal they may seem to those who are familiar with them. It is not the place on the scale of legal complexity that determines the true nature of the representation.

The amount in controversy, the routine nature of the proceedings, the informality, and the “scant” advising, see Majority Slip Op., at 8, may not make this a complex trial, but these are not factors by which “practicing law” is measured. On a daily basis, lawyers represent people where the amount in controversy is small. They routinely

represent people in routine matters. If their advice be “scant,” that does not diminish it or transform it into something else -- scant legal advice is still legal advice.

Accordingly, because the representative here was not a Macy’s officer or staff member, I would hold his legal representation constituted the unauthorized practice of law, and must respectfully dissent from the opinion of my colleagues.

Mr. Justice Castille joins this dissenting opinion.