-- *N.J.L.J.* ---
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COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Appointed by the Supreme Court of New Jersey

OPINION 50

A Nonlawyer Who Holds a Power of Attorney May Not Engage in the Practice of Law

The Committee on the Unauthorized Practice of Law received a complaint alleging that a nonlawyer attempted to represent a grievant in an attorney discipline matter. The nonlawyer argued that his conduct was permitted because the grievant had executed a power of attorney authorizing him to act as the grievant's agent. The Committee hereby issues this Opinion to clarify that a nonlawyer holding a power of attorney is not authorized to act as a lawyer licensed in the State of New Jersey. A power of attorney does not permit a nonlawyer to provide legal services or advice, or represent the principal in any judicial or quasi-judicial forum. A nonlawyer who acts in this manner engages in the unauthorized practice of law.

"A power of attorney is a written instrument by which an individual known as the principal authorizes another individual . . . known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal's agent." *N.J.S.A.* 46:2B-8.2a. An "attorney-in-fact" is different from an "attorney-at-law"; an "attorney-in-fact" is not a lawyer but, rather, a person who merely has authorization to perform certain acts on behalf of a principal.

A power of attorney cannot authorize an agent to perform acts that would be considered the practice of law.[1] Only the New Jersey Supreme Court has the power to regulate the practice of law and to decide who is authorized to practice law. *N.J. Const.* (1947) Art. VI, sec. 2, par. 3; *In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law*, 139 *N.J.* 323, 326 (1995) (the Court's "power over the practice of law is complete").

Admission to practice law in New Jersey is a "privilege burdened with conditions." *In re Application of Matthews*, 94 *N.J.* 59, 75 (1983). Lawyers seeking a license to practice law in New Jersey must have "good moral character, a capacity for fidelity to the interests of clients, and for fairness and candor in dealings with the courts." *In re Pennica*, 36 *N.J.* 401, 434 (1962).

> The layman must have confidence that he has employed an attorney who will protect his interests. Further, society must be guaranteed that the applicant will not thwart the administration of justice. These exigencies arise because the technical nature of law provides the unscrupulous attorney with a frequent vehicle to defraud a client. Further, the lawyer can obstruct the judicial process in numerous ways, *e.g.*, by recommending perjury, misrepresenting case holdings, or attempting to bribe judges or jurors.
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> [*Matthews*, *supra*, 94 *N.J.* at 77 (quoting *In re Eimers*, 358 *So.*2d 7, 9 (Fla. 1978)).]

[1] Powers of attorney often include provisions empowering the agent to "pursue claims and litigation." This provision permits the agent to act on behalf of the principal *as the client* in a lawsuit. An attorney-in-fact (the holder of a power of attorney) may make decisions concerning litigation for the principal, such as deciding to settle a case, but a nonlawyer attorney-in-fact may not act as lawyer to implement those decisions. *See* 3 *C.J.S.* Agency, Paragraph 217, page 499 (2008). Nor may an agent appear on behalf of a principal in court as a *pro se* party; only the real party in interest – the principal, not a nonlawyer agent -- is permitted to appear in court *pro se*. *R.* 1:21-1(a).

"The protection of the public and the assurance of the proper, orderly, and efficient administration of justice in New Jersey are ensured in our state through the requirement that only attorneys authorized to practice law in New Jersey may engage in legal activities." *In re Jackman*, 165 *N.J.* 580, 585 (2000). *See Rule* 1:21-1(a) (requirements to practice law in New Jersey). Licensed lawyers must comply with the *Rules of Professional Conduct* and are subject to discipline for ethical violations. *Rule* 1:20-1(a). Licensed lawyers must participate in mandatory continuing legal education. *Rule* 1:42-1.

Providing legal advice and representing parties in court or in quasi-judicial forums such as attorney discipline proceedings or administrative agency hearings is the practice of law. *Stack v. P.G. Garage, Inc.*, 7 *N.J.* 118, 120-21 (1951); *Slimm v. Yates*, 236 *N.J. Super.* 558, 561 (Ch. Div. 1989); *Tumulty v. Rosenblum*, 134 *N.J.L.* 514, 517-18 (Sup. Ct. 1946); Committee on the Unauthorized Practice of Law Opinion 21, 100 *N.J.L.J.* 1118 (1977). "The practice of law in New Jersey is not limited to litigation. . . . One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required." *In re Jackman*, *supra*, 165 N.J. at 586.

The Committee considered whether it is in the public interest to permit nonlawyers who hold powers of attorney to provide legal services or represent parties in court or a quasi-judicial forum. Permitting nonlawyers who hold a power of attorney to practice law would expose members of the public to persons who are not bound by the *Rules of Professional Conduct* and who do not have any training in law. It would interfere with the orderly administration of justice and judges' expectations that representatives appearing in court will act ethically. It would abrogate New Jersey's

licensing and admission requirements. The Committee finds that it is not in the public interest to permit the practice of law by nonlawyers who have been appointed agent of a principal pursuant to a power of attorney. Such conduct is the unauthorized practice of law.

This decision of the Committee is consistent with the findings of courts in New Jersey and other jurisdictions. In *Kasharian v. Wilentz*, 93 *N.J. Super*. 479 (App. Div. 1967), the court rejected an attempt by an administrator *ad prosequendum* who sought to institute a wrongful death action. "[N]ominal representatives or even active fiduciaries of the persons in beneficial interest, not themselves lawyers, should not be permitted to conduct legal proceedings in court involving the rights or liabilities of such persons without representation by attorneys duly qualified to practice law." *Id*. at 482.

The Ohio Supreme Court recently found that a person holding a power of attorney is not authorized to file papers in court on behalf of the principal. The Ohio Court quoted the findings of its Board on Unauthorized Practice of Law:

> A durable power of attorney, naming a non-attorney as one's agent and attorney-in-fact, does not permit that person to prepare and pursue legal filings and proceedings as an attorney-at-law. Since 1402, the law has recognized the distinction between an attorney-in-fact and an attorney-at law, and only attorneys-at-law have been permitted to practice in the courts.
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> [*Ohio State Bar Ass'n v. Jackim*,
> 901 *N.E.*2d 792, 794 (Ohio 2009).]

See also In re Estate of Friedman, 482 *N.Y.S.*2d 686, 687 (Surr. Ct. NY 1984) (principal "cannot use a power of attorney as a device to license a layman to act as her attorney in a court of record. To sanction this course would effectively circumvent the stringent licensing requirements of attorneys by conferring upon lay persons the same right to

represent others by the use of powers of attorney"); *Ross v. Chakrabarti*, 5 *A.*3d 135, 141 (Ct. Special App. Maryland 2010) (power of attorney did not give agent right to provide legal advice or appear in court on behalf of principal; to confer such power would be to give a nonlawyer "the right to practice law in this State without meeting the educational, examination, and ethical standards established by the General Assembly and the Court of Appeals"); *In re Conservatorship of Riebel*, 625 *N.W.*2d 480, 482 (Minn. 2001) (a power of attorney does not authorize a nonlawyer to sign pleadings and appear for principal in court proceedings; "the attorney-in-fact may make decisions concerning litigation for the principal, but a nonlawyer attorney-in-fact is not authorized to act as an attorney to implement those decisions"); *Mosher v. Hiner*, 154 *P.*2d 372, 374 (Ariz. 1944) (prohibiting attorney-in-fact from filing case in court on behalf of principal; "if an attorney-in-fact could appear in cases in our courts there would be no need for a College of Law at our University"); *Risbeck v. Bon*, 885 *S.W.*2d 749, 750 (Ct. App. Missouri 1994) (while parties may represent themselves in court, an agent or attorney-in-fact who is not a licensed attorney may not represent another person in court); *State v. Milliman*, 802 *N.W.*2d 776, 780 (Ct. Appeals Minn. 2011) ("a principal of an agent cannot, by executing a power of attorney, authorize the agent to practice law if the agent is not an attorney-at-law"); *Christiansen v. Melinda*, 857 *P.*2d 345 (Alaska 1993) (nonlawyer holding a power of attorney cannot bring suit on behalf of another person).

In sum, a nonlawyer holding a power of attorney is not authorized to act as a lawyer licensed in the State of New Jersey, cannot provide legal services or advice, and cannot represent the principal in any judicial or quasi-judicial forum. A nonlawyer who acts in this manner engages in the unauthorized practice of law.