State of West Virginia
Office of the Attorney General

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Ms. Anita R. Casey
Executive Director
The West Virginia State Bar
2000 Deitrick Boulevard
Charleston, WV 25311

Dear Ms. Casey,

You have asked for an Opinion of the Attorney General pertaining to the authority of unlicensed individuals to practice law in West Virginia Circuit Courts on behalf of limited liability companies ("LLCs"). This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advice upon questions of law … whenever required to do so, in writing, by … [a] state officer, board or commission." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your letter to the Attorney General's Office. You explain that your Unlawful Practice of Law Committee has received an inquiry from an unlicensed attorney who wishes to purchase an LLC, serve as its sole member, and routinely represent that LLC in suits to collect on accounts of the LLC in matters in West Virginia Circuit Courts, when the matters at issue exceed the monetary jurisdictional ceiling for magistrate courts.

Your letter raises the following legal question:

> *Does the exemption of West Virginia Code § 50-4-4a, which permits a party to be represented by an "agent" in magistrate court proceedings, permit a non-lawyer to represent an LLC in Circuit Court?*

West Virginia has adopted the well-accepted rule that only an attorney licensed to practice law can practice law in a court of record, except in cases where a person is appearing on his own behalf (*pro se*). *See* W. Va. Trial Ct. R. 4.03 ("Every party to proceedings before any court, except parties appearing pro se, shall be represented by a

person admitted to practice before the Supreme Court of Appeals of West Virginia and in good standing as a member of its bar."); *accord* W. Va. Code § 30-2-4 ("[i]t shall be unlawful for any natural person to practice or appear as an attorney-at-law for another in a court of record in this state … without first having been duly and regularly licensed and admitted to practice law in a court of record of this state"). As our Supreme Court of Appeals has explained, "[t]he reason for the requirement that the practice of law be engaged in only by duly licensed practitioners of the law is to establish and maintain a legal standard by which the rights of persons may not be jeopardized or sacrificed by counsel and advice of unlicensed and incompetent persons." *West Virginia State Bar v. Earley*, 144 W. Va. 504, 528, 109 S.E.2d 420, 435 (1959).

Consistent with this principle, the Supreme Court of Appeals has long held that a non-licensed person may not appear in a court of record on behalf of a corporation. *See West Virginia State Bar v. Earley*, 144 W.Va. 504, 526–527, 109 S.E.2d 420, 435 (1959). The harms that such a person might cause are no different than when a corporation is not involved. Like any other non-lawyer, a "non-lawyer corporate agent's lack of legal expertise could 'frustrate the continuity, clarity and adversity which the judicial process demands.'" *Shenandoah Sales & Service, Inc. v. Assessor of Jefferson County*, 228 W. Va. 762, 766, 724 S.E.2d 733, 737 (2012) (quoting *State ex rel. Western Parks, Inc. v. Bartholomew County Court*, 383 N.E.2d 290, 293 (Ind. 1978)). Nor is there any argument that such a person falls within the exception for unlicensed *pro se* representation. The person is appearing not on his own behalf, but rather as an agent of the corporation, which is "an artificial entity created by law" that can only act "through an agent or representative." *Id.* at 767, 724 S.E.2d at 738; *see also id.* at 766, 724 S.E.2d at 737 ("it is a well-settled legal principle that a corporation must be represented by a lawyer in a court of record").

While the Supreme Court of Appeals has not had occasion to consider whether a non-attorney may appear in a court of record on behalf of an LLC, we have no reason to doubt that the Court would find such an appearance impermissible. The risks presented by a non-lawyer representative of an LLC are similar—if not the same as—those presented by a non-lawyer corporate agent. Moreover, there is likewise no argument that such a person is engaged in *pro se* representation. An LLC—no less than a corporation—is an artificial legal entity. *See* W. Va. Code § 31B-2-201 (defining an LLC as a "legal entity distinct from its members"). Thus, a person seeking to represent the LLC in court would not be acting on his own behalf, but rather as an agent of the LLC. Notably, the overwhelming majority of cases outside of West Virginia hold that a non-attorney may not appear in court on behalf of an LLC. *See Lattanzio v. COMTA*, 481 F.3d 137 (2d Cir. 2007) (per curiam); *United States v. Hagerman*, 545 F.3d 579 (7th Cir. 2008); *Collier v. Cobalt, LLC*, No. Civ. A. 01-2007, 2002 WL 726640, at *1 (E.D. La. 2002) ("Whether the LLC is characterized as a corporation, a partnership, or a hybrid, it may only appear in court through counsel."); J. William Callison & Maureen A. Sullivan, Ltd. Liability Co. § 1:1, n.6 (2013) (collecting cases).

You ask whether West Virginia Code § 50-4-4a creates an exception to this rule for a non-lawyer to represent an LLC in a West Virginia Circuit Court. That law provides: "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." *Id.* (emphasis added). The Supreme Court of Appeals has construed this provision narrowly to permit an "isolated or casual appearance by a non-lawyer friend or relative of a party to proceedings in magistrate courts for the purpose of assisting such party in representing himself in the litigation." *State ex rel. Frieson v. Isner*, 168 W. Va. 758, 778, 285 S.E.2d 641, 654 (1981).

We agree with the Unlawful Practice Committee that Section 50-4-4a has no application to the facts as presented. By its plain terms, this provision "authorizes a party to appear by a lay agent in *magistrate court*—not a court of record," such as a Circuit Court. *Shenandoah Sales*, 228 W. Va. at 770, 724 S.E.2d at 741. This distinction is significant. Where a statute has sought to permit a non-natural person such as a corporation "to retain a non-lawyer representative to act as an agent on their behalf and engage in activities which constitute the practice of law in a *circuit court*," the Supreme Court of Appeals has found the law to be a violation of the Court's "inherent and constitutional authority to define, regulate and control the practice of law." *Id.* Accordingly, we conclude that Section 50-4-4a does not permit an LLC member not licensed to practice law in West Virginia to appear in a West Virginia Circuit Court on the LLC's behalf.

Sincerely,

PATRICK MORRISEY

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Solicitor General

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Deputy Attorney General