

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

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Opinion No. 05-036

Nonlawyer Representation On Behalf of Bonding Companies Before Sessions or Criminal Court

**QUESTION**

Whether bonding companies, which exist as corporations or limited liability companies, can be represented in Sessions or Criminal Court by authorized agents of the entities who are not licensed attorneys on petitions for exoneration, surrender or other relief?

**OPINION**

No. A nonlawyer agent of a bonding company, whether organized as a corporation or a limited liability company, may not represent the bonding company in Sessions or Criminal Court on petitions for exoneration or surrender because the appearance as an advocate in a representative capacity in court proceedings is considered the “practice of law.”

**ANALYSIS**

The “practice of law” has been defined by the Tennessee Legislature as:

the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

Tenn. Code Ann. § 23-3-101(2). The opinion request asks whether bonding companies may be “represented in Sessions or Criminal Court” by authorized agents who are not attorneys.

The Tennessee Supreme Court has determined that nonlawyer corporate representatives may not act on behalf of the entities they represent in state court proceedings. In *Old Hickory Eng’g & Mach. Co. v. Henry*, 937 S.W.2d 782 (Tenn. 1996), the nonlawyer president of a corporation signed and filed a negligence complaint on behalf of the corporation. The Supreme Court stated that,

“[s]ince a corporation is an entity separate and distinct from its officers and shareholders, the provision of Tenn. Code Ann. § 23-1-109 (1994), that ‘[a]ny person may conduct and manage the person’s own case in any court of this state,’ is not applicable to corporations, even when the person undertaking to act for the corporation is an officer or a shareholder.” *Henry*, 937 S.W.2d at 785. The Supreme Court looked to the Supreme Court of Minnesota, which explained the underlying rationale of the rule prohibiting nonlawyer corporate agents from appearing in court as follows:

A non-attorney agent of a corporation is not subject to the ethical standards of the bar and is not subject to court supervision or discipline. The agent knows but one master, the corporation, and owes no duty to the courts. In addition, a corporation is an artificial entity which can only act through agents. To permit a lay individual to appear on behalf of a corporation would be to permit that individual to practice law without a license.

*Id.* (quoting *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992)).

The Attorney General has previously opined on similar issues concerning nonlawyer corporate agents representing entities in court or other adjudicative proceedings. Tenn. Op. Att’y Gen. No. 04-160 (“a nonlawyer corporate agent cannot initiate a contested case hearing by filing an initial pleading as this action would be in a ‘representative capacity,’ would constitute the ‘practice of law’ under Tenn. Code Ann. §§ 23-3-101 and 23-3-103, and would be considered the unauthorized practice of law if any aspect of the undertaking or conduct requires the ‘professional judgment of a lawyer.’”); Tenn. Op. Att’y Gen. No. 97-164 (nonlawyers may not represent employees appearing before civil service commission hearings when such representation required the exercise of professional legal judgment).

Like a corporation, a limited liability company must be treated as a separate, legal entity. A limited liability company “has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power to: (1) [s]ue and be sued, complain and defend in its LLC name.” Tenn. Code Ann. § 48-212-201. One of the purposes of the limited liability company is to separate and shield its members from personal liability. “In keeping with the concept of limited liability as evidenced in Tennessee Code Annotated section 48-26-101, et seq., absent any such requirement, an individual member is shielded from liability for continuing contributions or losses. The fictional entity of the limited liability company is the party responsible for these obligations.” *Triple Rock, LLC d/b/a Commercial Ten, et al. v. A.C. Rainey, et al.*, No. M2000-01115-COA-R3-CV, 2003 WL 21338702, at \*9 (Tenn.Ct.App. June 10, 2003). As a limited liability company is a entity separate and distinct from its members, managers and/or board or governors, it follows that a nonattorney agent of a limited liability company could not advocate on behalf of the limited liability company in a court proceeding.

Thus, nonattorney agents of bonding companies organized as either corporations or LLC’s may not represent those entities on petitions for surrender or exoneration in court proceedings. Such

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activity would constitute the unauthorized practice of law prohibited by Tenn. Code Ann. § 23-3-103.

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PAUL G. SUMMERS  
Attorney General

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MICHAEL E. MOORE  
Solicitor General

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JENNIFER E. PEACOCK  
Assistant Attorney General

Requested by:

Honorable David Fowler  
Senator  
304 War Memorial Building  
Nashville, TN 37243-0211