

PRACTICE OF LAW BOARD STATE OF WASHINGTON

An Important Note on These Practice of Law Board Advisory Opinions

On Dec. 18, 2018, the Practice of Law Board was reconstituted under Washington Court General Rule 25 ([GR 25](#)). This reconstitution of the board changed the mission of the Practice of Law Board, (available [here](#)). Therefore, under the revised Rule GR 25, the Practice of Law Board no longer accepts any request for an advisory opinion, and no longer updates these advisory opinions to ensure they still represent good law and sound judgment regarding the unlawful practice of law. The unlawful practice of law is defined by the Revised Code of Washington (RCW) Title 2, Courts of Record, Chapter 2.48, The State Bar Act, Section 2.48.180 Definitions, Unlawful Practice a Crime ([RCW 2.48.180](#)), and Court General Rule 24 ([GR 24](#)) Definition of the Practice of Law.

ADVISORY OPINION NO. 5

REPRESENTING A BUSINESS IN COURT OR BEFORE AN ADMINISTRATIVE AGENCY

QUESTION PRESENTED

When may a nonlawyer represent a business in court or before an administrative agency?

SHORT ANSWER

A business must be represented by a lawyer in court. State small claims court and federal tax court are exceptions.

Many state and federal agencies authorize a business to represent itself or be represented by certain nonlawyers.

ANALYSIS

I. THE DEFINITION OF THE PRACTICE OF LAW AND ITS EXCEPTION

[General Rule 24](#) defines the practice of law in Washington. It provides in part:

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others . . .
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

* * *

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

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(9) Activities which are preempted by Federal law.

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II. REPRESENTING A BUSINESS IN COURT

The courts have held that, with limited exceptions, a business must be represented by a lawyer in state¹ and federal² court. “Non-attorney litigants may not represent other litigants and courts have long held that corporations and other unincorporated associations must appear in court through an attorney.”³

The Washington Supreme Court has not ruled on this issue, but a Court of Appeals decision required a business to be represented by a lawyer in court even when the business had a single owner.⁴

¹ [Lloyd Enterprises, Inc. v. Longview Plumbing & Heating Co.](#), 91 Wn. App 697, 701, 958 P.2d 1035 (1998).

² The U.S. Supreme Court explained that “save in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. § 1654, providing that ‘parties may plead and conduct their own cases personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.” *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 202, 113 S. Ct. 716 (1993).

³ [Advocates for Responsible Development v. Western Washington Growth Management Hearings Board](#), 155 Wn. App. 479, 484–85, 230 P.3d 608 (2010).

⁴ [Dutch Village Mall v. Pelletti](#), 162 Wn. App. 531, 537–38, 162 P.3d 1251 (2011).

A. Small Claims Court Exception in Washington State

Washington's small claims court is an informal and cost-effective forum for resolving small-dollar disputes.⁵ The parties typically represent themselves. By statute, a party may not be represented by a lawyer, legal paraprofessional, or other person "without the consent of the judicial officer hearing the case."⁶ However, the statute expressly provides that a business may not be represented by a lawyer or legal paraprofessional.⁷ As a consequence, a business is represented by a nonlawyer,⁸ typically an owner, officer, or manager, but not an in-house or outside lawyer. The rules are designed to maintain a level playing field that allows the parties to quickly and inexpensively resolve their dispute.

B. U.S. Tax Court Exception

The United States Tax Court authorizes nonlawyers to appear before it. Federal law preempts state law on this issue and federal law provides, "No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling."⁹ Accordingly, the U.S. Tax Court permits nonattorneys to appear before it and to represent taxpayers if they pass an examination and are admitted to practice before the Tax Court.¹⁰

In addition, "A corporation or an unincorporated association may be represented by an authorized officer of the corporation or by an authorized member of the association."¹¹

III. REPRESENTING A BUSINESS BEFORE A STATE OR FEDERAL AGENCY

A. State Agencies

[General Rule 24\(b\)\(3\)](#) allows nonlawyers to represent parties if authorized to do so by an administrative agency or tribunal. Many state agencies authorize nonlawyers to

⁵ [Revised Code of Washington \("RCW"\) 12.40.090](#) ("The hearing and disposition of the actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants.").

⁶ [RCW 12.40.080](#). The only exception arises when the defendant transfers the case from district court to small claims court. If the plaintiff had an attorney of record before the case was transferred, that lawyer may continue to represent the plaintiff in small claims court. [RCW 12.40.025](#).

⁷ [RCW 12.40.080](#). The only exception is noted in the prior footnote. [RCW 12.40.025](#).

⁸ [State ex rel. Long v. McLeod](#), 6 Wn. App. 848, 850, 496 P.2d 540, *review denied*, 81 Wn.2d 1004 (1972).

⁹ 26 U.S.C. § 7452.

¹⁰ U.S. Tax Court Rule of Practice and Procedure 200(a)(3). Law students are also authorized to provide limited assistance. Rule 24(a)(5).

¹¹ U.S. Tax Court Rule of Practice and Procedure 24(b).

represent a party—including a business—in a hearing or other proceeding before the agency.¹² The nonlawyer representative most commonly authorized to represent a business before an agency is an owner, officer, manager, or full-time employee.¹³

Some agencies require that the nonlawyer representative have certain skills or other qualifications. For example, the Board of Tax Appeals allows an accountant to represent a party.¹⁴ Several agencies authorize a lawyer who is not licensed in Washington to represent a party.¹⁵ Some agencies leave it to the discretion of the presiding or hearing officer to decide whether the representative has the necessary skill or ability to provide competent assistance.¹⁶ One agency, the Department of Social and Health Services, authorizes a party to be represented by “a friend, relative, community advocate, attorney, or paralegal.”¹⁷

¹² Examples include the Department of Social and Health Services ([Washington Administrative Code \(“WAC”\) 388-02-0155](#)), the Department of Revenue ([WAC 458-20-100\(5\)\(b\)](#)), and the Board of Industrial Insurance Appeals ([WAC 263-12-020\(3\)\(c\)](#)).

This footnote and the following footnotes do not contain a complete list of the dozens of state agencies that allow nonlawyer representatives. Nor do these footnotes explain which nonlawyers are authorized to appear before the agency. Because agency rules sometimes change, the examples cited in this advisory opinion should be reviewed to determine if they are still current.

¹³ An example is an adjudicative proceeding before the Department of Retirement Systems. [WAC 415-08-040\(4\)](#).

¹⁴ [WAC 456-09-210](#) and [WAC 456-10-210](#). Accountants can also appear before the Department of Revenue. [WAC 458-20-100](#).

¹⁵ In this advisory opinion, the term “nonlawyers” includes lawyers from other jurisdictions who are not admitted to practice law in the State of Washington, except as may be authorized by [Rule of Professional Conduct 5.5](#) (“Unauthorized Practice of Law; Multijurisdictional Practice of Law”). Examples of agencies that authorize lawyers not licensed in Washington to appear before them include the Utilities and Transportation Commission ([WAC 480-07-345](#)), the Securities Division of the Department of Financial Institutions ([WAC 460-16A-010](#)), and the Shorelines Hearing Board in the Environmental and Land Use Hearings Office ([WAC 461-08-385](#)).

Even more agencies authorize non-Washington lawyers to appear before them only if their state (or Washington, D.C.) grants reciprocal authority to allow Washington lawyers to represent parties before the agencies in their jurisdiction. Examples include the Gambling Commission ([WAC 230-17-045](#)) and the Department of Labor and Industries ([WAC 296-46B-995](#)).

¹⁶ For example, in a hearing before the Utilities and Transportation Commission, “The presiding officer may expel a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.” [WAC 480-07-345\(1\)](#).

¹⁷ [WAC 388-02-0155](#).

The nonlawyer representative's authorization is limited to the state agency's administrative proceeding and does not continue if the case is transferred or appealed to superior court.¹⁸

B. Federal Agencies

Similar to [General Rule 24\(b\)\(3\)](#), the Administrative Procedure Act of 1946 continued the practice of allowing nonlawyer representatives when authorized by a federal agency.¹⁹ As a result, numerous federal agencies also allow nonlawyers to appear before them.²⁰ Federal law preempts state regulation of unauthorized practice of law before federal agencies.²¹

¹⁸ [Advocates for Responsible Development v. Western Washington Growth Management Hearings Board](#), 155 Wn. App. 479, 484–85, 230 P.3d 608 (2010).

¹⁹ “A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.” 5 United States Code (“U.S.C.”) § 555(b).

²⁰ Examples include:

The Internal Revenue Service authorizes certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, registered tax return preparers, and other qualified individuals to practice before the IRS. 31 Code of Federal Regulations (“C.F.R.”) § 10.3. A business may also be represented by an officer or full-time employee. 31 C.F.R. § 10.7(c).

A variety of qualified nonlawyer representatives are authorized to appear before the Immigration Court and the Board of Immigration Appeals. 8 C.F.R. § 1292.1.

The Social Security Administration authorizes nonlawyer representatives if they are generally known to have a good character and reputation, are capable of giving valuable help, and are not disqualified or suspended from acting as a representative or otherwise prohibited by law from doing so. 42 U.S.C. § 406(a)(1); 20 C.F.R. §§ 404.1705(b), 416.1400(b), and 416.1505(b).

Other agencies that authorize nonlawyer representatives include the Department of Health and Human Services (45 C.F.R. § 205.10(a)(3)(iii)); Department of Labor (29 C.F.R. § 18.34; 20 C.F.R. § 802.202); United States Patent and Trademark Office (37 C.F.R. § 1.31); Equal Employment Opportunity Commission (29 C.F.R. § 1601.7); Small Business Administration (13 C.F.R. § 134.208); Occupational Safety and Health Administration (29 C.F.R. § 2200.22(a)); Department of Energy (10 C.F.R. § 205.3); National Labor Relations Board (29 C.F.R. § 102.38); and Interstate Commerce Commission (49 C.F.R. §§ 1103.1, 1103.3).

This is not a complete list of the many federal agencies that allow nonlawyer representatives. For additional examples, see the American Bar Association's report, “Results of the 1984 Survey of Nonlawyer Practice Before Federal Administrative Agencies.” Nor do these footnotes explain which nonlawyers are authorized to appear before the agency. Because agency rules sometimes change, the examples cited in this advisory opinion should be reviewed to determine if they are still current.

²¹ In *Sperry v. Florida*, 373 U.S. 379, 401–02 (1963), the U.S. Supreme Court held that under the Supremacy Clause of the United States Constitution, when a federal law or regulation

IV. REPRESENTING A BUSINESS IN AN ARBITRATION

The general rule discussed above in Section II applies to the superior court's mandatory arbitration program because it is a court-annexed arbitration program and not a private arbitration proceeding conducted outside the court system. Whether a business may represent itself or be represented by a nonlawyer in a private arbitration hearing is beyond the scope of this Advisory Opinion.

Advisory opinions are issued by the Practice of Law Board under the authority of the Washington Supreme Court pursuant to [General Rule 25\(c\)\(1\)](#).

This advisory opinion supersedes Advisory Opinion #11-01.

(January 10, 2014)

authorizes a nonlawyer to appear before a federal agency, the nonlawyer is not subject to state unauthorized practice of law rules when performing services reasonably necessary and incident to the activities authorized by federal law. [General Rule 24\(b\)\(9\)](#) acknowledges this holding by permitting “[a]ctivities which are preempted by Federal law” regardless whether they constitute the practice of law under Washington law.