No. 117720

IN THE
SUPREME COURT OF ILLINOIS

STONE STREET PARTNERS, LLC,	)	
	)	
Plaintiff-Appellee	)	On Appeal from the Appellate
	)	Court of Illinois First Judicial
v.	)	District, No. 12-3654
	)	
CITY OF CHICAGO DEPARTMENT OF	)	
ADMINISTRATIVE HEARINGS, ET AL.,	)	
	)	
	)	There heard on Appeal from the
Defendants-Appellants.	)	
	)	
	)	Circuit Court of Cook County
	)	Municipal Department,
	)	No. 12 M1 450026

THE ILLINOIS STATE BAR ASSOCIATION'S
AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF-APPELLEE

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I. INTRODUCTION

The Illinois State Bar Association ("ISBA") has a longstanding commitment to combatting the unauthorized practice of law in the interest of both the public and its members. The ISBA offers this *amicus* brief to assist the Court in considering Defendant-Appellant's ("Chicago") and its *amici* (the Illinois Attorney General ("AG"); the Society for Human Resource Management, et al. ("Human Resource"); and the American Automotive Leasing Association ("AALA")) request that this Court enter a sweeping rule authorizing nonlawyers to represent corporations in administrative proceeding in the State of Illinois[1]. As explained below, the ISBA believes such a rule is not supported by longstanding precedent or good public and judicial policy. Furthermore, the impact of such a rule on the public and legal profession will be significant. While the *Stone Street* opinion below presents a number of important issues, the ISBA's brief will focus on legal issues related to the unauthorized practice of law and not the factual specifics of the case or the question of retroactive applicability of the Appellate Court's opinion.

Notwithstanding the individual arguments raised in this brief, the Court should recognize the larger context of the rule Chicago and its *amici* seek to establish. The legal profession and legal services consumers are being confronted by fundamental change. Many new and young lawyers are facing significant law school debt and limited employment opportunities. Final Report, Findings & Recommendations on The Impact of Law School Debt on the Delivery of Legal Services, June 22, 2013, available at http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf. The traditional model of law school education is being called into question. *See* Andrew P. Morriss & William D. Henderson, *Lawyers and Law School Reform*, 100 Ill. B. J. 414

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[1] The motion of the ISBA for leave to file this amicus curiae brief is being submitted contemporaneously with the brief.

(August 2012). Some say the provision of legal services is being "commoditized." *See* Richard Susskind, The End of Lawyers? (2008). Lawyers face increasing competition from national and international legal service providers. Traditional areas of legal practice are being eroded by nonlawyer service providers as well, with or without any meaningful regulation. *See* Steve Crossland, Restore Access to Justice Through Limited License Legal Technicians, GP Solo (May/June2014). The internet is providing legal consumers with access to broad ranges of "legal" materials, services, and information. *See* Maria Kantzavelos, *Law Practice Management: Riding the DIY Wave*, 101 Ill. B. J. 128 (March 2013). Whether these changes are good or bad, who wins and who loses, and who is served and who is harmed, is an issue for another day and other forums. However, the Court should consider this broader legal environment for both legal services providers and consumers when considering issues of whether nonlawyers should be authorized by this Court to represent corporations in Chicago's Department of Administrative Hearings ("DOAH"), and potentially other, administrative hearings in the State of Illinois. Certainly, Chicago and its *amici* clearly anticipate this Court's ruling with respect to the DOAH will have potential broader applicability.

The issue before the Court in this case for the ISBA membership and all Illinois lawyers is significant. Notwithstanding the complexity of the issue, the ISBA's position is simple. Corporations may appear in legal proceedings, including administrative proceedings, only by a licensed lawyer. More importantly, if a person is providing legal advice or legal services, including representation before a tribunal, they must be licensed as a lawyer by this Court. This is a case by case determination not susceptible to a prospective application based upon the nature of the forum involved.

II. ARGUMENT

A. NONLAWYER REPRESENTATION OF CORPORATIONS IN LEGAL PROCEEDINGS IS INCONSISTENT WITH LONGSTANDING ILLINOIS PRECEDENT.

It has long and consistently been held by Illinois courts that corporations must be represented by counsel in legal proceedings. *Downtown Disposal Services v. City of Chicago*, 2012 IL 112040, ¶17 referencing *Nixon, Ellison & Co. v. Southwestern Insurance Co.*, 47 Ill. 444, 446 (1868). The rationale for the rule is two-fold: (1) a corporation is an independent entity that can only act through agents; and (2) the corporate interests may not be the same as corporate officers. *Downtown Disposal*, 2012 IL 112040, ¶17 ("This rule rises from the fact that a corporation is an artificial entity that must always act through agents and there may be questions as to whether a particular person is an appropriate representative."…"The interests of the corporate officers and that of the corporation, a distinct legal entity, are separate." referencing *Upjohn Co. v. United States*, 449 U.S. 383, 390-92 (1981)). Corporate representation by a lawyer mitigates both of these concerns.

The lawyer required representation for corporations rule is so fundamental it is recognized by the special ethics rules in place for lawyers who represent organizations. Ill. S. Ct. Rule of Prof. Conduct 1.13 ("Organization as Client"). This Rule specifically address how lawyers deal with the potential for conflicting interests between corporate officers and the corporate entity. In addition, the lawyer required representation for corporations rule is reflected in statute. The Corporation Practice of Law Prohibition Act which implicitly prohibits corporate pro se appearances. 705 ILCS 220/1 ("[i]t shall be unlawful for a corporation to practice law or appear as an attorney at law for any reason in any court in this state or before any judicial body.").

The two concerns identified above are no less present when a corporation appears before an administrative tribunal, such as the DOAH. In fact, it would appear that the DOAH, as well as

most other administrative tribunals, are precisely the type of "legal proceedings" where the lawyer representation rule should apply. The proceedings before the DOAH clearly affect what the *Downtown Disposal* Court referred to as the "substantial legal rights" of a party necessitating lawyer representation of a corporate entity. *Downtown Disposal*, 2012 IL 112040, ¶18 ("The filing of the complaint affects the substantial legal rights of the party seeking administrative review, in this case, Downtown Disposal. As such, only an individual representing the corporation itself can ascertain whether it is best for a corporation to pursue review of an administrative decision and invoke the appellate mechanism."). As noted in the First District Appellate Court's opinion below, DOAH judgments have been elevated to the "dignity of court judgment." *Stone Street Partners*, 2014 IL App (1st) 123654, ¶10. The DOAH can impose fines, seize property, and compel community service for violations. (See discussion below.) The DOAH has extensive, albeit what some lawyers might call "simple" or "informal," procedures. Legal concepts of due process remains essential. *Stone Street Partners*, 2014 IL App (1st) 123654, ¶11. Its administrative law officers issue final orders which include findings of fact and *conclusions of law*. Chicago Municipal Code 2-14-040 (emphasis added). Its decisions on review, like other administrative tribunals who have been ceded a judicial function, are given the deferential "manifest weight of the evidence" standard of review on factual issues and the "clearly erroneous" standard for mixed questions of law and fact by the courts. *Schacter v. City of Chicago*, 2011 IL. App. (1st) 103582, ¶34. It is also likely, as a quasi-judicial body, concepts of judicial estoppel apply to statements made at DOAH hearings. *See Adco Services, Inc. v. Bullard*, 256 Ill.App.3d 655, 659 (1st Dist. 1993)(Even though not all of these factors need to be present, "[A] proceeding by an administrative agency is quasi-judicial when the powers and duties of the agency conducting the proceeding include the power: (1) to exercise judgment and discretion; (2) to hear and determine or to ascertain

facts and decide; (3) to make binding orders and judgments; (4) to affect the personal or property rights of private persons; (5) to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and (6) to enforce decisions or impose penalties.") Given all these indicia of legal proceedings, the fact that they are conducted by an administrative agency should not be sufficient to undo the longstanding precedent of, and reasoning for, corporations to be represented by lawyers when appearing before such tribunals.

In contrast to this longstanding precedent, Chicago and its *amici* contend that this Court should adopt a rule authorizing nonlawyers to represent corporations in administrative hearings; specifically the DOAH but broadly applicable to all administrative proceedings. Chicago and its *amici* point to Illinois Supreme Court Rule 282(b) (eff. July 1, 1997) for the proposition that the Court already allows corporations to appear in small claims cases without lawyer representation so therefore the Court should allow nonlawyer representation of corporations in DOAH proceedings (Chicago, p. 30). The analogy does not support the argument. Illinois Supreme Court Rule 282 allows a corporation to defend itself through any officer, director, manager, department manager or supervisor of the corporation in certain (but not all) small claims actions. It does not allow *any lay person* to represent it, but only certain corporate employees. Chicago and its *amici* suggest allowing any lay person, without any training, experience, or knowledge, to become a "corporate representative" for the purposes of DOAH hearings. Second, in the small claims context, the litigants, represented or not, are proceeding under the supervision and monitoring of a trained judge who is likely to ensure certain fundamental legal principles are adhered to by the litigants. No such safety check is available at DOAH or other administrative hearings for the protection of nonlawyer represented corporations.

Chicago and its *amici* also contend that corporations should not be required to hire lawyers for DOAH and other administrative proceedings because lawyers cost too much and corporations can't afford them (Chicago p. 27; AG p. 8-9, Human Resource p. 17, AALA p. 10). This "lawyers cost too much" argument is a common, but unsupportable, one. At the outset, this argument is suspect because it is *for-profit* corporations that are at issue in this case. Having enjoyed the benefits and protections of incorporation, it is not unreasonable that corporations bear some of the "burden" associated with their corporate status as well. *See In re: IFC Credit Corp.*, 663 F.3d 315 (7th Cir. 2011)(In this case, Judge Posner discusses the rationale behind the lawyer representation rule). It is not unreasonable that *for-profit* corporations should bear this cost of doing business, especially where the cost (whatever it may be) is demanded by the law for the appropriate and justifiable reasons established by this Court. It is certainly not anti-competitive because requiring that all corporations be represented by lawyers establishes a level corporate playing field.

Along these same lines, a fatal flaw in Chicago's "lawyers are too expensive" argument is that the services for which they do not want to pay lawyers, will have to be paid to *someone*; whether it is an in-house lawyer or a nonlawyer corporate representative. Corporations cannot represent themselves. Corporations appearing before the DOAH (and all administrative proceedings) will bear a cost for representation by someone. Chicago and its *amici* are simply presuming, without any foundation, that lawyers "cost too much" in comparison to other nonlawyer representatives or in-house personnel.

Chicago does reference a 2014 ISBA salary survey that it says reveals that the average billable rate of ISBA members is $253 an hour (Chicago p. 27). This statistic is not particularly supportive for justifying a rule from this Court that would allow nonlawyers to represent corporations before the DOAH. In fact, the study revealed that the median hourly rate of ISBA

members from across the state was $250 an hour, revealing that one-half of ISBA members charge a rate less than $250. What the billable rate also does not reveal in and of itself the benefits provided to clients by a highly regulated, skilled, and ethical profession, or that such benefits may likely be missing from nonlawyer corporate representatives.

Ultimately, the "lawyers are too expensive" argument falsely and negatively stereotypes an entire profession. With respect to fees, the truth of the matter is that over the last 20 years lawyers have become adept and flexible about pricing and charging competitive fees for their services. Legal fees are not a "take it or leave it at this price" proposition. That argument simply does not comport with professional or business reality.

Chicago and its *amici* make a related argument that requiring lawyers to represent corporations at the DOAH (and other administrative proceedings) imposes too great an administrative burden on its operations (Chicago p. 9, AG p. 10-11). Chicago notes that requiring lawyers in administrative proceedings such as the DOAH "critically impedes the efficiency of administrative proceedings across the state" (Chicago p. 11). *Amicus* Human Resource is less diplomatic when it states that "inserting lawyers with their tendency to 'legalize' proceedings is likely to delay the resolution of claims" (Human Resource, p. 14). This argument too is not supportable.

Chicago and its *amici* avoid the necessary reality that *someone* has to appear on behalf of the corporation at these administrative hearings. *Someone*, whether it is a corporate officer or nonlawyer corporate representative, must appear. That *someone* will have the same procedural rights as lawyer to offer and contest evidence, make arguments, and advise the client concerning appeal rights. Any argument that requiring lawyers to represent corporations will somehow burden the system more than any other corporate representative is hard to understand. To be sure,

lawyers will not "cut corners" at their clients' expense to ensure administrative efficiencies. However, if the DOAH is inefficient, overworked, or understaffed, the remedy is not to exacerbate these problems by allowing nonlawyer corporate representation and to actively seek to exclude lawyers from the process. As an analogy, the courts themselves are experiencing problems with increasing numbers of litigants without lawyer representation. It has created problems of judicial administration where judges feel overburdened and litigants do not know their rights and obligations which contributes to burdening the judicial system. Eaton & Holterman, Limited Scope Representation is Here, CBA Record, April 2010. http://apps.americanbar.org/legalservices/delivery/downloads/feature_eaton.pdf. These same problems will likely occur at the DOAH. The solution is not to facilitate more nonlawyer representation, but rather to make lawyers part of the solution.

Furthermore, the DOAH has been operating under its self-styled "Stone Street Corporate Notice" since March 2014. This "Notice" provides that a corporation must be represented by an attorney and that the assigned administrative law judge will allow any corporate defendant a continuance to obtain a lawyer. Available at: http://www.cityofchicago.org/city/en/depts/ah/supp_info/Stone_Street_Corporation_Notice.html. (last visited 4-15-15). Chicago has reported no material (or any) impact on the administrative review process by this Notice.

Chicago also cites *Idaho State Bar Association v. Idaho Public Utilities Commission*, 637 P.2d 1168 (1981) as authorizing lay representation of corporations. The court in that case actually ruled that giving the commission the authority to decide who may appear and represent parties before them was too broad and beyond the authority of the commission to adopt. *Id.* at 1173. This case also held that in proceedings before regulatory bodies such as the commission, third persons

unconnected with the entity and acting in a representative capacity in certain proceedings would necessarily be engaging in activities commonly associated with the practice of law. *Id*. at 1172. A more relevant holding from Idaho can be found in *Kyle v. Beco Corporation*, 109 Idaho 267, 268, 707 P.2d 378, 379 (1985), which affirmed the Industrial Commission's policy of not allowing nonlawyer representation before the Commission ("the employer corporation is not entitled to have a lay representative act as its attorney during the commission's proceedings.") . This case before the court must also be distinguished from *Hampton v. Brewer*, 733 P.2d 852 (Nev. 1987) which allows insurers or employers to be represented in a contested case by private legal counsel or by another agent, yet does not speak specifically to, or even mention, corporations.

In conclusion, corporations must be represented by lawyers in administrative proceedings. The longstanding rationale for this rule has not changed. The same concerns identified in *Nixon, Ellison & Co*. in 1868 and unequivocally reaffirmed in *Downtown Disposal* in 2012 remain true today. The fact that our modern complex society now chooses to delegate certain legal matters, many with significant consequences, to an administrative tribunal rather than a court should not defeat the legitimate purposes of the lawyer representation rule.

B. NONLAWYER REPRESENTATION OF CORPORATIONS IN ADMINISTRATIVE PROCEEDINGS IS THE UNAUTHORIZED PRACTICE OF LAW.

Given the facts before it in the case below, the First District Appellate Court applied the correct legal standard and issued an appropriate holding. Chicago disagrees and seeks reversal but also, with some of its *amici*, something more. Chicago and its *amici* view the *Stone Street* holding to have invalidated all administrative rules in the State of Illinois that purport to allow nonlawyer corporate representation in administrative hearings. *Stone Street*, IL App (1st) 123654, ¶47 (Connors, J. concurring in part and dissenting in part)("The majority does not say so explicitly,

but it has in effect invalidated not only DOAH Rule 5.1 but also every other administrative rule that allows for nonattorneys to appear on behalf of corporations at an administrative hearing.") In turn, they seek a broad ruling from this Court authorizing nonlawyer corporate representation in all administrative hearings (Chicago p. 26, Human Resources p. 18 – 19). In substance, Chicago is advocating a rule from this Court that the unauthorized practice of law can never occur in any proceeding before the DOAH or other administrative tribunals regardless of the nonlawyer's actual conduct. Chicago would have this Court overturn longstanding precedent on the unauthorized practice of law that requires a case by case analysis of the acts performed by the nonlawyer in favor of a prospective authorization for all nonlawyer corporate representation based on the mere outline of the administrative agency's hearing process. This is nothing short of asking the Court to cede its authority over the practice of law to the legislature, executive agencies, municipalities, and others.

It is undisputed that the Illinois Supreme Court has the inherent power to define and regulate the practice of law in this state. *E.g. Downtown Disposal*, 2012 IL 112040, ¶13. There is no mechanistic formula to define what is and what is not the practice of law. *In re Descipio*, 163 Ill. 2d 515, 523 (1994); *People ex rel. Chicago Bar Ass'n v. Barasch*, 406 Ill. 253, 256 (1950)). In *Barash*, the Court defined the practice of law as "the giving of advice or rendition of any sort of service…when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill. *Barash*, 406 Ill. at 256 (quoting *People ex rel. Illinois State Bar Ass'n v. Schafer*, 404 Ill. 45, 50 (1949)). The Court decides the practice of law question based on the character of the acts themselves. *Downtown Disposal*, 2012 IL 112040, ¶15 (2012)("we examine the character of the acts themselves to determine if the conduct is the practice of law.").

As these cases instruct, the question of whether a nonlawyer is practicing law is a fact intensive, case-by-case determination.

The forum where the acts at issue occurred is irrelevant to the question of whether those acts constitute the practice of law. This Court has found that the practice of law can occur not only in court, but outside of court as well, including administrative agencies. *In re Howard*, 188 Ill.2d 423 (1999)(the practice of law "encompasses not only court appearances, but also services rendered out of court and includes the giving of any advice or rendering of any service requiring the use of legal knowledge."); *People v. Goodman*, 366 Ill. 346, 8 N.E.2d 941, 947 (1937)("It is immaterial whether the acts which constitute the practice of law are done in an office, before a court, or before an administrative body. The character of the act done, and not the place where it is committed, is the factor which is decisive of whether it constitutes the practice of law."); *In re Yamaguchi*, 118 Ill.2d 417 (1987)(finding that a lawyer aided the unauthorized practice of law by facilitating the appearance of a nonlawyer before an administrative tribunal.)

This very clear instruction to examine the character of the acts done has been employed in administrative tribunal cases such as *Perto v. Board of Review*, 274 Ill.App.3d 485 (2nd Dist. 1995), *Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814 (1st Dist. 2009), and *Grafner v. Department of Employment Security*, 393 Ill.App.3d 791 (1st Dist. 2009), all of which are relied upon and referenced by Chicago and its *amici*. In these cases, the Appellate Court examined the specific *acts* of the nonlawyers, all involving the Illinois Department of Employment Security ("IDES"), to determine whether the nonlawyers engaged in the practice of law.

In *Perto*, in what the Appellate Court, Second District, described as a very narrow holding, the Appellate Court found that a third-party nonlawyer representative did not engage in the unauthorized practice of law by checking a box on an IDES form noting that the company wished

to protest a former employee's claim for benefits and including a statement of facts on that form. *Perto*, 274 Ill.App.3d at 493. The third-party nonlawyer representative also prepared and sent a letter requesting a hearing on the IDES' eligibility determination. *Perto*, 274 Ill.App.3d at 494. The nonlawyer representative did not participate in the subsequent IDES telephonic hearing. The Appellate Court said that "Taking these principles into account, we conclude that [the representative's] *action in this case* did not constitute the practice of law. The *acts* were simple, fact-based responses to determinations that plaintiff was eligible for unemployment benefits by the Department" (emphasis added). *Perto*, 274 Ill.App.3d at 494.

In *Sudzus*, the nonlawyer at issue was a business owner who was participating as a business representative but also testifying as a fact witness. *Sudzus*, 393 Ill.App. 3d at 816. The court examined the business owner's *actions* during the proceedings: testifying about the general duties of his employees and asking "clarifying questions at the request of the referee." *Sudzus*, 393 Ill.App. 3d at 824. In holding that these limited actions did not rise to the level of practicing law, the Appellate Court did not base its decision on any general examination of the IDES administrative hearing procedures.

Finally, in *Grafner*, a nonlawyer third-party represented employer St. Bartholomew's Parish during an informal telephone hearing. During the hearing, the third-party representative asked a total of "three clarifying questions, but did not independently offer any factual or legal information." *Grafner*, 393 Ill.App.3d at 801. Here too, it was the specific *acts* of the nonlawyer representative that were examined by the Appellate Court. Significantly, the Appellate Court noted that even though the proceedings were administrative, it was "not concluding that a nonattorney representative's actions during an unemployment compensation hearing may never be considered the unauthorized practice of law…" *Grafner*, 393 Ill.App.3d at 802. In fact, one

justice expressly commented that the acts at issue constituted the practice of law. *Grafner*, 393 Ill.App.3d at 805 (O'Brien, P.J., specially concurring in part).

All of these cases, and the Supreme Court authority they rely upon, share a common thread when examining the issue of whether a nonlawyer representative was engaged in the unauthorized practice of law: an examination of the specific acts at issue. None of these cases granted a prospective and blanket authorization for nonlawyer representation based solely upon the perceived nature of the proceeding. This Court should not do so here.

In the case below, these legal precedents were correctly applied. Admittedly, the Appellate Court was hampered by Chicago's destruction of "virtually all of the administrative record," so an entire accounting of the *acts* of the nonlawyer representative may be unknown. *Stone Street*, 2014 IL App (1st) 123654, ¶4. However, the Appellate Court knew that: (1) the purported corporate representative was not a lawyer; (2) the nonlawyer representative filed an appearance; (3) the nonlawyer representative presented evidence; (4) the nonlawyer representative was the caretaker of a former corporate owner; and (5) the nonlawyer representative was not an authorized corporate representative. *Stone Street*, 2014 IL App (1st) 123654, ¶4 and 14. Notwithstanding these limited facts, the Appellate Court's analysis and holding was appropriate. The Appellate Court examined the precedents from such cases as *Goodman*, *Sudzus*, *Grafner*, and held "that representation of corporations at administrative hearings – particularly those which involve testimony from sworn witnesses, interpretation of laws and ordinances, and can result in the imposition of punitive fines – must be made by a licensed attorney at law." *Stone Street*, 2014 IL App (1st) 123654, ¶16. This holding is not the blanket rule Chicago and its *amici* fear. The holding recognizes the factual components of the applicable precedent such as eliciting testimony and interpreting laws and ordinances.

Given the absence of more specific facts, such as were available in *Perto*, *Sudzus*, and *Grafner*, Chicago broadly asks the Court to rule that the nonlawyer's acts don't matter, but that it's the nature of the administrative hearing, like those at the DOAH, that is determinative of the unauthorized practice of law question. Only *amicus* Attorney General seems to acknowledge the longstanding precedent and in fact clearly supports (AG p. 13 "Instead, this Court should adhere to its precedent that calls for a determination on a case-by-case basis of whether the acts of a non-attorney representative required legal knowledge or skill in order to determine whether the representative engaged in the unauthorized practice of law."). In contrast, Chicago wants a blanket ruling from this Court that nonlawyers appearing and representing corporations at *all* DOAH (and other administrative) hearings can never be engaged in the practice of law (Chicago p. 26 "[the Court] should exercise that [inherent] authority [to regulate the practice of law] to authorize lay representation of corporations in informal administrative proceedings like at DOAH."). *Amicus* Human Resource takes a similar approach and seeks to preserve what it claims (incorrectly) to be the broad holding of *Sudzus* and *Grafner* that a nonlawyers' representation of a corporation at the IDES does not constitute the practice of law (Human Resource p.5). These broad requests are inconsistent with this Court's, and the Appellate Court in *Perto*, *Sudzus*, and *Grafner*, precedent requiring a case-by-case analysis of the acts performed when determining whether a nonlawyer is engaged in the unauthorized practice of law.

In support of Chicago's position that the DOAH, and other administrative tribunals, do not involve the practice of law, it and its *amici* raise the same general arguments: (1) administrative proceedings are simple and streamlined to such a point that legal analysis is not required; (2) requiring legal representation will critically impede the efficiency of administrative proceedings across the state; (3) the Court itself allows nonlawyer corporate representatives to defend

themselves in small claims; and (4) requiring lawyers at administrative hearings will create a serious financial burden on Illinois businesses. These later three issues were discussed above in II.A. and will not be repeated here.

The subjective simplicity of an administrative proceeding, DOAH or otherwise, can not be determinative of whether a nonlawyer is engaging in the unauthorized practice of law. The "simplicity" argument was expressly rejected by this Court in *Chicago Bar Association v. Quinlan & Tyson, Inc.*, 34 Ill.2d 116, 123 (1966) ("Mere simplicity cannot be the basis for drawing boundaries to the practice of a profession."). Chicago itself recognizes that not all administrative proceedings come in the same shapes and sizes and that some can be quite complex (Chicago, p. 17, "Indeed, 'modern administrative proceedings' are not all functionally the same. To the contrary […] administrative proceedings will differ depending on the specific purpose for which the agency was created and the complexity of the regulations that agency administers."). Accordingly, in the absence of universal "simplicity," any rule issued by the Court concerning the unauthorized practice of law in administrative proceedings should not be based upon generalizations or speculation of what acts might or might not occur at any given proceeding.

Turning specifically to the DOAH, the "simplicity" of its proceedings and hearings is not borne out by the facts. Chicago points to the inapplicability of laws such as the Administrative Procedures Act, and the Codes of Civil and Criminal Procedure. It notes that these laws have been replaced with "a handful of basic procedural rules" (Chicago, p. 12). However, this "handful of basic rules" contains 12 chapters and 47 separate sections. Available at: http://www.cityofchicago.org/city/en/depts/ah/supp_info/rules_and_ordinances/rules_regulations.html. (last visited 1-28-15). The DOAH rules detail procedures for: the mandatory recording of proceedings, pre-hearing settlement conferences, pre-hearing motions, discovery, issuance of

subpoenas, continuances, objections to the constitutionality of any applicable law or ordinance, presentation of witnesses and exhibits, applicable standards of proof, pleas, closing arguments, dismissals for want of prosecution, defaults, post-hearing motions, and appeals. These "basic rules" cross reference other laws such as the Municipal Code of Chicago and the Illinois Municipal Code. Chicago further notes that the matters before the DOAH typically involve "basic matters such as the building code and traffic matters" (Chicago p. 14). Here too, however, there is nothing basic about the 35 "Divisions" and hundreds of pages of the Chicago Building Code or traffic laws. Available at: http://www.amilegal.com/nxt/gateway.dll/Illinois/chicagobuilding/buildingcodeandrelatedexcerptsofthemunic?f=templates$fn=default.htm$3.0$vid=amlegal:chicagobuilding_il. (last visited 4-20-15). Also, the fines and penalties imposed in the DOAH can be significant, as noted in *Stone Street*, reaching more than $135,000 for multiple violations. *Stone Street*, 2014 IL App (1st) 123654, ¶ 15. Remedies can also include impoundment of personal property (vehicles), (Chicago Municipal Code Article I, section 2-14-132), and sentencing violators to hours of community service, (Chicago Municipal Code, Article I, section 2-14-100).

Other claims of "simplicity" in comparison to trials are without merit. For instance, Chicago argues that DOAH proceedings are simple because no juries are allowed (Chicago p. 13). While the presence of a jury may add complexity to a legal matter, it is not a necessary component of one. The complexity of any legal matter is shaped by the facts and law at issue regardless of the forum. Also, in contravention of the claims of simplicity, the DOAH itself provides a "legal help" desk to help nonlawyers (and maybe even lawyers) navigate through DOAH procedures. Available at: http://www.cityofchicago.org/city/en/depts/ah/supp_info/court_services.html. (last visited 4-14-15).

Finally, Chicago and many of its *amici* reference a number of Illinois agencies that purport to allow some form of nonlawyer corporate representation in their administrative proceedings. This of course is not dispositive. It is clear that the legislature or administrative agencies can not regulate or define the practice of law. *People v. Goodman*, 366 Ill. 346, 352, (1937)("the legislature has no authority to grant a nonattorney the right to practice law even if limited to practice before an administrative agency." To do so would be to impermissibly permit legislative encroachment upon the judiciary. *Adair Architects, Inc. v. Bruggeman*, 346 Ill.App. 3d 523, 525 (3rd Dist. 2004)("It is the court's solemn duty to protect the judicial power from legislative encroachment and to preserve the integrity and independence of the judiciary." citing *People v. Felella*, 131 Ill.2d 525, 538-39 (1989).)

In addition, even where agency regulation address the question of corporate representation, there is wide variation. Some agencies require lawyer representation such as the the Pollution Control Board. 35 Ill.Adm. Code 101.400. The Illinois Racing Board (11 Ill. Adm. Code 204.60(d)) and the Illinois Export Development Authority (14 Ill Adm. Code 910.30(f)(4)) purport to allow a corporation to be represented only by a corporate officer or director. The Department of Financial and Professional Regulation purports to allow a corporation to be represented by an officer only upon presentation of a duly executed resolution of the Board of Directors authorizing the appearance. 68 Ill.Adm. Code 1110.90(d). Still others, such as the Department of Labor, purport to allow an appearance by bona fide officers, employees, or representatives. 56 Ill. Adm. Code 120.220(a)(2). The blanket rule sought by Chicago is inconsistent with these varying regulatory schemes, and would serve to ignore the judgment of those agencies who have determined that nonlawyer corporate representation is prohibited or severely restricted for their

own proceedings. More fundamentally, Chicago has cited no caselaw that sanctions nonlawyer corporate representation before any of these agencies' administrative tribunals.

In conclusion, nonlawyer representation of corporations in administrative proceedings implicates the practice of law. Resolution of whether such representation is the unauthorized practice of law is a case-by-case determination. A prospective blanket rule allowing nonlawyer corporate representation before the DOAH, or other administrative tribunals, without regard to the specific acts at issue is contrary to longstanding Court precedent concerning the regulation of the practice of law the authority of the Court.

C. NONLAWYER CORPORATE REPRESENTATION IN ADMINISTRATIVE PROCEEDINGS VIOLATES SOUND JUDICIAL AND PUBLIC POLICY.

This Court's rules and precedents concerning the unauthorized practice of law "are intended to safeguard the public from individuals unqualified to practice law and to ensure the integrity of our legal system." *Downtown Disposal*, 2012 IL 112040, ¶14. Prohibitions on the practice of law by nonlawyers serve important public purposes, including the avoidance of "irreparable harm to many citizens as well as to the judicial system itself." *Mallen & Associates v. MyInjuryClaim.com Corp.*, 329 Ill. Adm. 3d 953, 956 (1st Dist. 2002); *Lawline v. American Bar Association*, 956 F.2d 1378 (7th Cir. 1992)("The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services.").

The importance of the Court's duty to protect the public in legal matters is underscored by the substantial regulation of the legal profession. This includes educational requirements, a vigorous disciplinary process, mandatory continuing legal education, strict rules of conduct (particularly covering such matters as confidentiality, conflict of interest, and competency), and high standards of integrity. These vital public purposes are thwarted when nonlawyers are allowed

to appear and participate on behalf of others, including corporations, in administrative hearings where legal rights are presented, considered, and decided.

The unauthorized practice of law often leads to extended litigation, and therefore increased costs, to correct the mistakes made by a nonlawyer. Court time and resources, as well as the consumer's time and resources are wasted. Substantive legal rights including client confidentiality and fiduciary responsibilities will be lost. Despite safeguards, consumers still fall victim to those engaging in the unauthorized practice of law. For these reasons, it is imperative this court take all available actions to protect the public from the unauthorized practice of law and the "the schemes of the unscrupulous." *Janiczek v. Dover Management*, 134 Ill.App.3d 543, 546, (1st Dist. 1985).

As the Court knows, the unauthorized practice of law is not a phantom occurrence, victimless crime, or a disguise for the protection of lawyers' economic interests. The Court itself, through its Attorney Registration & Disciplinary Commission ("ARDC"), expends significant resources on combatting the unauthorized practice of law. According to the ARDC's Annual Report, there were 129 unauthorized practice of law investigations opened in 2013. ILL. ATT'Y Registration & Disciplinary Comm'n, 2013 Annual Report 20 (2014), available at http://www.iardc.org/AnnualReport2013.pdf. This is up from 90 in 2012. *Id.* Eighty-five of those investigations in 2013 were against unlicensed individuals or entities. *Id.* In 2012, nonlawyers accounted for 55 unauthorized practice of law investigations opened by the ARDC. ILL. ATT'Y Registration & Disciplinary Comm'n, 2013 Annual Report 28 (2014), available at http://www.iardc.org/AnnualReport2012.pdf. These actions are all in addition to the resources expended by local law enforcement, bar associations, and others.

Despite these matters, Chicago's proposed rule will encourage and facilitate the unauthorized practice of law at the DOAH, and potentially other administrative tribunals, in the

name administrative convenience. However, administrative convenience cannot trump the Court's authority to regulate the practice of law and protect the public.

IV. CONCLUSION

The opinion in *Stone Street* should be affirmed by this Court. That opinion correctly applied and analyzed this Court's precedent with respect to nonlawyer corporate representation. Furthermore, the Court should decline Chicago's offer to establish an expansive rule authorizing nonlawyer corporate representation before the DOAH or other administrative tribunals.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 341

The undersigned hereby certifies that this Brief complies with the form and length requirements of Supreme Court Rules 341 (a) and (b). The length of this brief, excluding the appendix, is 20 pages.

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