Unlicensed Practice of Law Issues in Property Tax Assessment Appeals: The Search for a Uniform Rule

BY THOMAS J. McNULTY

Abstract

For many years there has been considerable activity concerning what acts constitute the practice of law in the area of property tax assessment appeals and therefore can only be undertaken by licensed lawyers. This paper presents a comprehensive review of the history, status, and trends surrounding the issue. While there is no uniform rule, recent experiments in two states suggest there may be hope for one in the future. In the meantime, all involved in the property tax appeal process should be aware of the rule in their jurisdictions and conform their conduct accordingly.

Introduction

The licensing of occupations involves a collision between the power of government to license and regulate those who would pursue a profession or vocation and the traditional notions of liberty and the pursuit of happiness embedded in the Declaration of Independence. See, for example, *Lowe v. S.E.C.* 1985 (concerning regulation of publications issued by investment advisers whose licenses were revoked); *Gaboney v. Emire Storage* 1949 (power to regulate entry into a profession not lost when the practice of the profession entails speech); *Schware v. Board of Bar Examiners* 1957 (states can require high standards such as moral character for admission to the bar); and *Dent v. West Virginia* 1889 (the right to follow any lawful calling, business, or profession is not arbitrarily deprived where its exercise is not permitted because of a failure to meet conditions imposed for protection of society).

The expansion of licensing to include occupations other than the more obvious professional categories of medicine and law has been the source of much debate and criticism.

Thomas J. McNulty is a partner in the Chicago-based law firm of Neal Gerber & Eisenberg LLP, where he leads the firm's Real Estate Tax Litigation Group. He lectures on Illinois property tax issues in the Masters in Taxation program at Chicago-Kent Law School. An author and contributor at various IAAO seminars, he is graduate of the University of Notre Dame and Rutgers Law School.

For example, a few years ago, the Institute for Justice, a public interest law firm that advocates for libertarian causes, undertook a review of state licensing requirements (Carpenter et al. 2012). The review found occupations subject to licensing ranged from animal husbandry to milk weighers and samplers and included interior decorators and florists. These findings have added to the healthy amount of criticism and skepticism concerning the need for licensing in general. See, for example, "The Best and Worst States for Small Business: Red Tape Blues" (*The Economist* 2014); "Licensing Interior Decorators? Let's Nix State-Approved Cartels" (McArdle 2016); and "Iowa Hair Braiders File Lawsuit Challenging State Cosmetology Licensing Requirements" (Powers 2015). Compare *Kagan v. City of New Orleans* 2014 (sustaining licensing requirement for tour guides) with *Edwards v. District of Columbia* 2014 (striking licensing requirement for tour guides). See also *Waugh v. Nevada State Board of Cosmetology* 2014 (unlicensed operation of makeup artistry school).

Although the call for rolling back what some call oppressive and unnecessary regulations has not centered upon professions like medicine, the licensing of the medical profession has been the subject of various proposals to ease some of those requirements, for example, "Compact Aims to Help Doctors Practice across State Lines" (McCullough 2015); "Modernization of the Professional Nursing Law" (The General Assembly of Pennsylvania 2015); and "Maryland Entrepreneur Files Lawsuit Challenging Veterinary Cartels" (Wilson 2008).

The practice of law has been no exception: "More States Consider Licensing Legal Transactions" (Felice 2015); "Bill Would Let Nonlawyers Represent Taxpayers in County Tax Appeals" (Hanna 2014); and "Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters" (Washington Courts 2012).

Almost 20 years ago, a proposal by the Commission on Multidisciplinary Practice of the American Bar Association (ABA) to allow lawyers to practice law in "multi disciplinary practices" with nonlawyers invited a discussion to consider the way legal and other professional services will and ought to be delivered to the public in the United States (ABA 1999; Rubenstein 1992). The defeat of the proposal by the ABA House of Delegates in the wake of Enron-like disasters involving accounting and other professions did not end the discussion. Issues regarding the unlicensed practice of law, which were implicit in the multi disciplinary concept, continue to be debated and their limits explored.

The concept of a *cognitor* has been proposed by some in the accounting profession. A cognitor is a *general contractor* who would subcontract work to a network of service providers (*Illinois Bar News* 1992). In addition, representatives of the accounting profession have pledged to continue their efforts to obtain approval of the multidisciplinary practice concept (Ellis 2000). See also *In re Lerner* (2008), a Brief of Amicus from the Curial Estate Planning Council urging the Nevada Supreme Court to allow the "multidisciplinary" approach in field of estate planning.

Taxpayer representation in property tax appeals is an area in which there continues to be much debate. Accounting firms, consulting firms, and others have entered this arena in varying levels of participation, ranging from "lower levels" of appeal all the way to the steps of the courthouse. The implications of the "lawyers versus consultants" debate invoke public policy considerations broader than an unlicensed individual seeking to represent taxpayers before assessment tribunals.

This article discusses and analyzes some of the cases that have dealt with issues of the unlicensed practice of law in property tax appeals and examines the significant issues and risks associated with such conduct. The issues are complex, and, not surprisingly, the results differ on a state-by-state basis. In general, more recent developments signal a softening in favor of allowing more involvement by unlicensed individuals. For this

analysis, taxpayer representation includes the following:

- Advising a taxpayer that there is a cause of action based on an incorrect assessment and what methods should be used to seek relief
- Preparing and filing complaints and/or appeal forms to invoke the jurisdiction of an assessment official or tribunal for review of an assessment
- Presenting the evidence at any hearing, formal or informal, and presenting argument on behalf of the taxpayer
- Examining and cross-examining witnesses at any hearing, formal or informal.

Testifying as a witness, expert or otherwise, is not within the meaning of taxpayer representation in this article.

Taxpayer Representation: The Debate

There is a common theme to each side of the unlicensed practice of law discussion involving property tax appeals. Opponents of taxpayer representation argue that assessors exercise a judicial or quasi-judicial function even though they are not lawyers or judges and do not sit in a courtroom. Thus, the nature of the act of filing and prosecuting an assessment appeal at any level requires the skill of an attorney. Proponents argue that appeals at "lower" levels are informal and usually non-adversarial, consisting merely of routine informational exchanges between the taxpayer and the assessment official, who usually is not a judge or even a lawyer. Furthermore, proponents argue, the assessor's or tribunal's custom and practice is to allow anyone to represent a taxpayer and no one seems to be harmed in the process. (See comments of Marvin Poer and Co. submitted to Lake County Illinois Board of Review dated February 26, 2013 in opposition to Board Rule II confirming lawyers must represent taxpayers [*Chicago Law Bulletin* 2013]).

In several communications in the early 2000s, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) joined the discussion, taking the position that regardless of the definition of the practice of law, consultants and others should be authorized to represent taxpayers so that there is open and healthy competition in the marketplace for these services (FTC 2007; FTC and DOJ 2002, 2003, 2004, 2009). Interestingly, the FTC did not argue that unlicensed individuals should be permitted to try cases in court. Thus, the logic in favor of competition and rugged individualism has its limits. This position is founded on the premise that lawyers are licensed in order to protect the public.

For a discussion of the evolution of the regulation of the practice of law in the United States, see *Dressel v. Ameribank (*2003); *Unauthorized Practice of Law: The Full Science Book That Was* (1972); and the *Report of the Task Force on the Unauthorized Practice of Law* (Ohio State Bar Association 2005). The FTC posits that the interest in preventing harm to the public from unlicensed practice must be balanced against the ability of unlicensed individuals to perform the tasks involved. Competition from unlicensed, but nevertheless competent, individuals presumably drives down prices for the consumer, who would otherwise suffer from the oppressive monopoly of lawyers. Viewed in this light, the FTC believes the public is protected by a marketplace that weeds out ineffective providers.

Defining the Practice of Law

Who Says So?

In virtually every state, the exclusive power to define and regulate the practice of law belongs to the judiciary. See, for example,

- *People v. Goodman* (1937)
- *West Virginia State Bar v. Earley* (1959), striking rule allowing nonlawyers to represent

workers compensation claim; legislature may not interfere with court's inherent power

• *Shenandoah Sales & Service v. Assessor* (2012), striking statute purporting to allow corporations to be represented by agents

• *Florida Bar v. Moses* (1980), court has constitutional responsibility regarding practice of law

• *State ex rel. Reynolds v. Dinger* (1961), regulation of practice of law rests exclusively in Supreme Court

• *Opinion of the Justices* (1935), court has inherent power of control practice of law

• *In re Lerner* (2008), court's power is exclusive

• *Clark v. Austin* (1937), legislature has no power to regulate practice of law

• *In re Nolo Press* (1999), court's authority is exclusive and for benefit of the public

• *Hunt v. Maricopa County* (1980), determination of who shall practice law in Arizona and under what conditions is function of the court, but allowing lay representation before Employee Merit System where county employee faced disciplinary charges

• *Iowa Supreme Court Commission on Unauthorized Practice of Law v. Sturgeon* (2001), federal bankruptcy rate does not limit court's power

• *Preston v. Stoops* (2008), suggestion that practice of law can be regulated by legislature is without merit.

As a consequence, the legislature has little authority when it comes to defining the practice of law and regulating it.

In Illinois, the court in *People v. Goodman* (1937) expressed the point as follows:

> *[T]he General Assembly has no authority to grant a layman the right to practice law. ... It follows that any rule adopted by ... (a) commission purporting to bestow such privilege upon one not a duly licensed attorney at law is void. Nor can the General Assembly declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law.*

The legislature's role is limited to declaring illegal the unauthorized practice of law and prescribing punishment to aid the court in using its power to control the practice of law (*King v. First Capital Services* 2005; *Richard F. Mallen & Associates Ltd. v. Myinjuryclaim.com Corp*. 2002). See also *In re Nolo Press* 1999 (court's inherent power under the Texas Constitution to regulate Texas law practice is assisted by statute, primarily the State Bar Act); Texas Gov't Code §§ 81.001-114 (State Bar Act "is in aid of the judicial department's powers under the constitution to regulate the practice of law"); and *Clark v. Austin* 1937 (any legislative encroachment on judicial power, whether reasonable or unreasonable, violates the constitution, which provides, in express terms, there shall be no encroachment at all).

Note that many legislatures have adopted laws to aid the court in using its power to control the practice of law; see, for example, Georgia Ann. Code Title 15 § 10-101; Mississippi Code Ann. § 73-3-55; Tennessee Code Ann. § 23-3-101; Maryland Code Ann. Sec 10-101(b); Michigan CL 600.916; and California Business & Professions Code, § 6125-6133.

Is There a Uniform Rule?

Defining the practice of law has been a difficult proposition for most courts. Courts have steadfastly avoided the creation of any *bright line* or universal test for every possible situation, acknowledging that a one-size-fits-all approach is simply not achievable; see

• *Bump v. Barnett* (1944), court refrains "from attempting to frame a complete, all-inclusive statement of what constitutes the practice of law"

• *In re Lerner* (2008), the practice of law is not susceptible to a bright-line, broadly stated rule

• *Roberts v. LaConey* (2007), there is no comprehensive definition

• *In re Flack* (2001), unlicensed practice cases must be decided on case-by-case basis.

The Pennsylvania Supreme Court in *Dauphin County Bar Association v. Mazzacaro* (1976) explained the difficulty inherent in prescribing a bright-line test:

> *[M]arking out the abstract boundaries of legal practice would be an elusive, complex task more likely to invite criticism than to achieve clarity. ... While at times the line between lay and legal judgments may be a fine one, it is nevertheless discernible. Each given case must turn on a careful analysis of the particular judgment involved and the expertise that must be brought to bear on its exercise.*

Similarly, in *Pioneer Title v. State Bar* (1958), the court was unable to reach consensus, thereby suggesting that determination should be made by each state; see also the ABA Task Force on Model Definition of the Practice of Law (ABA 2003).

Courts have therefore prescribed general principles and *keys* rather than a precise and all-encompassing definition; see

• *In re Lerner* (2008), all-encompassing principle that the practice of law is involved when the activity requires the exercise of judgment in applying general legal knowledge to a client's specific problem

• *People v. Shall* (2006), the touchstone is whether an unlicensed person offers "advice or judgment about legal matters to another person for use in a specific legal setting"

• *Susman v. Grado* (2002), "practice of law involves the rendering of legal advice and opinions directed to particular clients"

• *Shenandoah* (2012), practice of law includes advice to another involving the application of legal principles to facts; corporate employee may not represent corporation).

See also

• Alaska Stat. Sec. 08.08.230

• Alaska State Bar Rule 63

• Georgia Code Ann. Sec. 1519-50

• Kentucky. Rev. Stat. Ann. Rules of Supreme Court, SCR 3.020

• Maryland Code Ann. Business Occupations & Professions Sec. 10-1-1(h)

• Rule 11 of the Rules of the Supreme Court of Wyoming

• Rhode Island Gen. Laws Sec. 11-27-2.

• Rule 31 of the Arizona Supreme Court

• *Arkansas Bar Association v. Block* (1959), impossible to frame any comprehensive definition

• *Koscove v. Bolte* (2001), generally one who acts in a representative capacity in protecting, enforcing, or defending legal rights and duties of another is practicing law

• *Marshall Steel v. Nanticoke Memorial Hospital* (1999)

• *State ex re Florida Bar v. Sperry* (1962), broad definition of practice of law "nigh onto impossible"

• *Fought & Co. v. Steel Engineering* (1998), enumerating specific services is fruitless exercise.

In *In re Shoe Manufacturers Protective Association* (1936), the Massachusetts Supreme

Court expressed the view that the practice of law consists of

> *[D]irecting and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to how such rights are secured.*

In accord are *State Bar of Arizona v Arizona Land Title and Trust* (1961); Virginia Supreme Court Unauthorized Practice Rules, Section B (one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances that imply his possession and use of legal knowledge or skill); and *Opinion No. 25* (1992) and *Supplement to Opinion No. 25* (1996).

In *People ex rel. Bar Association v. Schaeffer* (1950), the Illinois Supreme Court summarized the generally accepted definition and common theme as follows:

> *... if the advice given or the service performed requires legal skill or knowledge or more than ordinary business intelligence, it constitutes the practice of law.*

It is therefore the nature of the act, rather than the forum or formality involved, that implicates the practice of law. The ABA Task Force on Model Definition of the Practice of Law stated, "definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity" (ABA 2003).

Courts have rejected invitations to look the other way when the work involved may be considered by some to be routine or simplistic or even when no harm to the public is shown to have occurred by the commission of the act. In *Chicago Bar Association v. Quinlan and Tyson* (1966), the claim was that brokers who without charge filled in blanks in standard contract forms were practicing law. Although the court allowed a limited amount of filling in the blanks to names of the parties and similar nonsubstantive matters, the Illinois Supreme Court stated,

> *Nor is it relevant that the services are customarily provided by ... (non-lawyers) ... and that no identifiable harm is proved to have ensued ... It is the character of the acts themselves that determines the issue.*

Furthermore, the court explained the reason for the rule:

> *[M]ere simplicity cannot be the basis for drawing boundaries to the practice of a profession. A pharmacist, for example, might be competent to prescribe for many of the simpler ailments, but it takes a medical background to recognize when the ailment is simple. Protection of the public requires that only licensed physicians may prescribe or treat for any ailment, regardless of complexity or simplicity.* And protection of the public requires a similar approach when the practice of law is involved [emphasis added]. (*Chicago Bar Association v. Quinlan and Tyson* 1966)

Other jurisdictions echo this consideration regarding "routine" matters. In *In re Lerner* (2008), the court stated,

> *... the public is not well served by defining the practice of law in such a manner as to require a person faced with a routine transaction to incur the expense of a lawyer unnecessarily. And those transactions that may be considered "routine" evolve over time. ... But this court also emphasized that a person's decision not to obtain*

legal counsel must be one based on the person's self reliance; not reliance on a non-lawyer third party.

Illinois courts and many others have declared that the following acts constitute the practice of law:

(a) Giving an opinion as to the right to maintain an action against another
(b) Furnishing legal services or giving advice to others on questions of law
(c) Soliciting, settling, or adjusting personal injury claims
(d) Procuring an agreement enabling an unlicensed person to control the negotiations and the litigation that might follow and hiring licensed attorneys to conduct litigation for others, for the financial profit of the hirer
(e) Preparing deeds and mortgages in real estate transactions.

See *People v. Goodman* (1937); *In re Shoe Manufacturers* (1936); *State ex rel. Perkins* (1934); Louisiana Rev. Stat. Title 37, ch. 4, 212; and *Board of Overseers of the Bar v. Morgan* (2001).

The absence of a bright line and the fact that many courts agree that the determination of the unlicensed practice of law requires a careful determination on a case-by-case basis invite unlicensed individuals to test the limits; see *"*Unauthorized Practice of Law: New ABA Survey of UPL Enforcement Finds Varied Funding, Predicts Increased Activity*"* (ABA 2005). There is, unsurprisingly, a conflict and split in the outcomes when courts review taxpayer representation before *lower* tribunals in the context of property tax appeals. An examination of the cases mirrors the debate and augurs that the end is not foreseeable.

States That Have Determined Taxpayer Representation Is the Practice of Law

Illinois

In 1987, the Illinois Supreme Court examined issues of the unlicensed practice of law in property tax appeals in *In re Yamaguchi*. In that case, Attorney Yamaguchi routinely signed blank complaint forms that a broker completed and then filed at the Cook County Board of Appeals. With the exception of signing a blank complaint form, Attorney Yamaguchi took no further steps with respect to the case. The remainder of the valuation complaint form was completed by the unlicensed individual who, without supervision of attorney Yamaguchi, set forth the results of his legal analysis of the facts that he deemed justified a tax assessment reduction. The broker filed the complaint and presented oral argument (rather than expert testimony) before the Cook County Board of Appeals.

The Illinois Supreme Court determined that both the unsupervised completion of the complaint form and appearance by the broker as a taxpayer representative before the Cook County Board of Appeals constituted the unauthorized practice of law. Attorney Yamaguchi therefore was disciplined for aiding and abetting the unauthorized practice of law in violation of the Illinois Rules of Professional Conduct (Illinois Courts 2010). The court held, "[T]here can be no doubt that ... (the broker's) conduct ... was, in fact, the unauthorized practice of law."

Based on the same facts, attorney Yamaguchi also was charged with and disciplined for (a) engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, (b) engaging in conduct prejudicial to the administration of justice, and (c) failing to reveal to a tribunal information in his possession that a person other than his client had perpetrated a fraud on the tribunal. The holding in *In re Yamaguchi* was consistent with the 1960 appellate decision *Chicago Bar Association v. Friedlander* (1960). In the latter case the court enjoined a group of consultants from engaging in similar conduct, that is, the

preparation and filing of the appeal and submission of argument to the board of appeals.

Relying on the *Chicago Bar Association v. Friedlander* decision, the court in *In re Yamaguchi* also rejected the argument that other unlicensed persons had routinely argued cases before the board of appeals so that the non-attorney's conduct was not the practice of law or was otherwise acceptable. The court commented,

> *In evaluating ... [the broker's] practice of completing valuation complaints and appearing before the tax board, we find no justification in the assertion that the conduct was widely adopted by realty brokers and acquiesced in by the tax board. As we stated in Chicago Bar Association v. Quinlan & Tyson, Inc. ... if by their nature acts require a lawyer's training for their proper performance, it does not matter that there may have been widespread disregard of the requirement or that considerations of business expedience would be better served by a different rule. (*In re Yamaguchi 1987*)*

Like most jurisdictions, the Cook County Board of Review is only one of various tribunals and agencies involved in the tax assessment process. The court in *In re Yamaguchi* explicitly held that both the completion and filing of board of review complaint forms and the presentation of argument as taxpayers' representative are the practice of law. The question then becomes whether similar acts before other Illinois assessment officials are the practice of law in property tax assessment appeals.

The Illinois State Bar Association has concluded that *In re Yamaguchi* extends to taxpayer representation before all boards of review in Illinois as well as county assessors and supervisors of assessment (*Illinois Bar News* 1992). The opinion is in part based on the observation that all Illinois assessment officials have the same statutory responsibility upon complaint filed by the taxpayer to correct the assessment as "appears to be just" (Illinois General Assembly n.d.). Furthermore, in Illinois boards of review are considered *quasi-judicial* such that in limited circumstances writs of certiorari and writs of mandamus may issue against them; see *Goodfriend v. Board of Appeals of Cook County* (1973) and *Oil v. Hankhaus* (1983). The case of *People ex rel. Devine v Murphy* (1978) confirmed that assessment decisions made by assessors both adjudicate and affect the property rights of the taxpayer, which are reviewable by the judiciary. Although the case of *In re Application of Rosewell v. Ford Motor Company* (1989) does not involve issues defining the practice of law, it supports the conclusion that the filing of complaints and presentation of evidence by taxpayers' representatives before an Illinois assessor or board of review meets the definition of the practice of law. In this case, the court held that statements made to an assessment official even at a "lower level" may constitute judicial admissions.

Ohio and the Accommodation

In a hard-fought series of cases in Ohio, the courts held that it is the practice of law to prosecute tax appeals before Ohio county boards of revision (*Worthington City School District Board of Ed v. Franklin County Board of Revision* 1999; *Sharon Village Ltd. v. Licking County Board of Revision* 1997; *Krier v. Franklin County Board of Revision* 1994; *Witt Company v. Hamilton County Board of Revision* 1989*;* and *Cocon v. Botnick Building Co.* 1989).

In *Cleveland Bar Association v. Middleton* (1994), the State Board of Commissioners on the Unauthorized Practice of Law concluded that taxpayer representation before boards of revision was not the practice of law. The board relied on a ruling from a previous case, *Heinze v. Giles* (1986), in which the court held that an appearance before an unemployment board was not practicing law even though it was a "proceeding of record." The board in *Cleveland Bar Association* also observed that taxpayer representation by laymen was widespread. Further, it expressed that the view that the issue of fair market value is

merely a factual issue and not one requiring legal skill to solve. Last, the board relied on the facts that board members are neither judges nor lawyers and there was no evidence of harm to the public.

In *Krier* (1994), the Ohio Court of Appeals promptly overruled the *Cleveland Bar Association* decision and, responding to the existing practice of lay taxpayer representation, forewarned,

> *[I]t is undisputed that practice by non-attorneys before the boards of revision is widespread in Ohio. However, such conduct or practice, while in conformity with custom, is no guarantee of conformity with the law.*

The court in *Krier* also responded sharply to the argument that the sole issue of market value did not require a lawyer's skill. The court stated,

> *While … [Cleveland Bar Association]… focused their decision on whether the appraisal and accounting skills required to present an application … to the BOR [Board of Revision] are skills peculiar to a lawyer, and concluded they are not, we believe this unduly limits the description of the activities of a representative in a BOR hearing. Most significantly, we note the absolute lack of professional or ethical constraints upon property tax valuation entrepreneurs ... in presenting their claims to the BOR. While the simple accounting and appraisal functions are no doubt the most obvious components of an application ... a host of other issues are brought forth.*

The court therefore held that the solicitation and filing of complaints at Ohio boards of revision were the practice of law.

In *Sharon Village* (1997), a consultant had prepared and filed complaints with the Licking County Board of Revision. The Ohio Supreme Court confirmed the holding in *Krier*, that this conduct was the practice of law. The court observed that the Ohio Constitution vests sole authority over the regulation of the practice of law in the judicial branch. It observed the broad definition of the practice of law in Ohio as follows:

> *The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law* (Sharon Village 1997, quoting from Land Title Abstract & Trust Co. v. Dworken 1934*)*

In examining the contours of the definition, the Ohio Supreme Court considered the nature of the act a dispositive factor as follows:

> *It is clear that a licensed attorney in the practice of law generally engages in three principal types of professional activity. These types are legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents and papers requiring knowledge of legal principles which is not possessed by an ordinary layman; and appearance for clients before public tribunals, which possess the power and authority to determine rights of life, liberty and property according to law, in order to assist in the proper interpretation and enforcement of law. (Sharon Village* 1997*)*

Thus, it was relevant to consider the procedure at the Licking County Board of Revision as well as to understand the purpose and impact of the complaint for a tax reduction. In that regard, in *Krier* the court noted the following as important considerations:

- Ohio boards of revision are quasi-judicial bodies whose jurisdiction is invoked by verified complaint
- A complaint before the board is for the purpose of an adversarial proceeding as any other complaint
- At a board hearing, parties may be given an opportunity to present testimony and documentary evidence and make legal arguments.

Furthermore, the board of revision has the authority to increase the assessment. The court concluded therefore that this case "easily" fit within the broad definition of the practice of law.

Worthington City (1999) soon followed on the heels of *Sharon Village*. In a consolidated appeal, the Supreme Court applied the holding in *Sharon Village* to conclude that the mere signing of a complaint, which was prepared by an attorney for the purpose of verifying its contents, was not the practice of law. It held, however, that the preparation and filing of complaints by corporate officers and the treasurer of a local board of education was the practice of law.

In response to this long line of cases and at the urging of a strong consultant lobby, in 2006 the Ohio General Assembly adopted Ohio House Bill 694, which amended Ohio Revised Code Section 5715.9 to allow certain "qualified" but unlicensed individuals to prepare and file complaints at the county boards of revision. These individuals included the spouse of an owner, "agents" holding a designation from a professional assessment organization, a licensed real estate broker, a real estate appraiser, a certified public accountant, or an officer of a corporation. The Ohio Supreme Court affirmed the legislation to allow for the filing of a complaint by the specified unlicensed individuals, provided they did not otherwise practice law. In *Dayton Supply & Tool Co. v. Montgomery County Board of Revision* (2006), the court held that specified non-attorneys may prepare and file complaints and "present the claimed value" but may not make legal arguments, examine or cross-examine witnesses, or undertake any tasks that can be performed only by an attorney. See also *Columbus City School District Board of Education v. Franklin County Board of Revisions* 2012 (spouse of owner may file); *Nascar Holdings, Inc. v. Testa* 2015 (out-of-state attorney may not file appeal); *Ford Motor Company v. Testa* 2015; and *Neuman v. Franklin County Board of Revision* 2014 ("sister and manager" may not file appeal).

Initially there appeared to be no implications for the outcome of a case in which the non-attorney files the appeal, "states the claim as a matter of fact," but then crosses the line. In *Richman Properties LLC v. Medina County Board of Revision* (2014), the individual owner of an LLC filed the appeal and appeared at the board of tax appeals to "present the claimed value." Notwithstanding that a motion *in limine* (on the threshold) sought to restrict the corporate officer from examining witnesses, the non-attorney was allowed to cross-examine the county's witnesses in violation of the ruling in *Dayton Supply*. Although the court in *Richman* acknowledged that the conduct of the non-attorney at the hearing crossed the line into unlicensed practice, it rejected the county's motion to reverse the decision below on that basis. The court noted that while pleadings can be stricken on the basis of the unlicensed practice of law, the effect of the examination of a witness by a non-attorney was not so clear. The court did not strike that portion of the record but limited its review to the standard for assessment appeals as to whether the decision below was reasonable and lawful. It reversed the decision below on the merits and upheld the assessment.

The Ohio statute and the *Richman* decision highlight the difficulty presented when non-attorneys are permitted inroads in the presentation of a tax appeal. The concurring opinion in *Richman* regarded the unlicensed practice of law in that case to be a "very serious matter." Realizing that the leeway afforded by the court to the legislature in the *Dayton Supply* decision carried such unintended consequences, the concurrence stated,

> *The accommodation we have struck permits the legislature and administrative agencies some leeway but essential to that accommodation is the 'concomitant responsibility' of the other branches of Ohio government to enforce the boundaries defined by this court (Richman 2014, O'Neill, J., concurring).*

The concurring opinion therefore urged all the administrative agencies to "take all reasonable steps to assure that the unauthorized practice of law does not occur in the proceedings they conduct."

Subsequent cases indicate the Ohio Board of Tax Appeals has heeded the exhortation of the *Richman* concurrence by striking from its record of proceedings, briefs, legal arguments, and evidence submitted by unlicensed individuals at hearings. See

- *Waterloo Farms, Inc. v. Athens County Board of Revision* (2016)
- *Megaland GP LLC v. Franklin County Bd. of Revision* (2015), court *sua sponte* (on the court's own motion or initiative) strikes brief filed on behalf of taxpayer
- *Westerville City Schools v. Franklin County Board of Revision* (2015)
- *Columbus City Schools v. Franklin County Board of Revision* (2015)
- *Board of Education v. Franklin County Board of Revision* (2015).

Pennsylvania

In Pennsylvania, the court in numerous cases has held that taxpayer representation before county boards of assessment appeals not only is the practice of law but also constitutes common law champerty and maintenance. (*Champerty* is a bargain between a stranger and a third party to a lawsuit by which the stranger pursues the party's claim in consideration of receiving part of any judgment proceeds [*Clark v. Cambria County Board of Assessment Appeals* 2000]. Maintenance is an officious intermeddling in a lawsuit by a non-party by maintaining, supporting, or assisting either party, with money or otherwise, in the litigation.)

In *Westmoreland County v. RTA Group Inc.* (2001), *Clark v. Cambria* (2000), and *Westmoreland County v. Rodgers* (1997), a consultant entered an agreement with the taxpayers in which he undertook their representation for the appeal at his cost subject to a contingent fee. Under the agreement, the consultant had the sole discretion to determine whether an attorney should be hired and when and how to proceed with the appeals (*Westmoreland County v. RTA Group* 2001). The County Board of Revision contended the agreements were for the practice of law, champertous, and violative of public policy.

The commonly raised defenses were interposed: that the appeal process was relatively simple, that proceedings before the boards were informal, and that the preparation of the appeal forms was on preprinted appeal forms rendering the service not one requiring legal skill or knowledge.

In *Westmoreland County* v. *RTA Group* (2001), the court rejected these defenses, observing the broad definition of the practice of law in Pennsylvania, similar to that in Ohio, to include representation "before public tribunals to whom is committed the function of determining rights of life, liberty and property according to the law of the land." The court also noted that hearings before administrative boards such as the board of revision are essentially "judicial in character" in which property rights are adjudicated.

The court also concluded such agreements were champertous such that the real party in interest in the case was the tax consultant and not the taxpayer. Because the tax consultant had no interest in the real property before the tribunal, the consultant had no standing to bring the action for assessment reduction. The appeals were dismissed on this basis.

Other Jurisdictions

Other courts have ruled similarly to those in Illinois, Ohio, and Pennsylvania. See, for example,

- *Gallagher v. First Dependable Mortgage Co., Inc*. (1992), taxpayer representation before county board of taxation is the practice of law
- *Bump v. District Court of Polk County* (1942), assignment of tax refund claim that included the power to take legal action in the name of the assigning party
- *Crawford v. McConnell* (1935), authorization of agent empowered to commence litigation to recover taxes
- *State ex rel. Indiana State Bar Association v. State Board of Tax Commissioners* (1999), court approved settlement to permit unlicensed representation only in limited circumstances.

Compare *Cippolone v. City of White Plains* (1992), seeking judicial review of assessments is the practice of law, with *Property Valuation Analysts v. Williams* (1990), consulting company may represent homeowner before local board but may not pursue judicial relief, and with *Stephens Production Company v. Bennett* (2014), corporation must be represented by counsel.

Jurisdictions Permitting Taxpayer Representation by Consultants

There are roughly 20 jurisdictions with statutes that purport to authorize taxpayer representation by consultants or other unlicensed individuals, for example,

- Arizona [Ariz. Rev. Stat. Ann. §42-221(1)]
- South Carolina (S.C. Code Ann. §12-43-300)
- South Dakota (S.D. Codified Laws §10-11-17)
- Vermont (Vt. Stat. Ann. §4222)
- California [Cal. Rev. & Tax Code §1603(a)]
- Georgia [Ga. Code Ann. §48-5-311(e)(6)(A), Title 7, chapter 1152.0001, Property Tax Consultant Occupation Law].

The cases that have found taxpayer representation not to implicate the practice of law are in stark contrast to the cases discussed above that hold to the contrary.

Georgia

A 1997 Georgia case is illustrative of many cases that concluded that taxpayer representation is not the practice of law. In *Grand Partners Joint Venture I v. Real Tax Resource Inc.* (1997), the tax consultant entered into an agreement with the taxpayer that authorized the consultant to initiate appeals to local taxing jurisdictions when the need was warranted in the opinion of the consultant. The agreement limited itself to "informal appeal levels up to and including any state boards of equalization." The tax representative obtained a reduction with the assessor before there was any hearing at the board of equalization. The taxpayer, apparently not satisfied with the result, declined to pay the consultant. In defense to the consultant's claim for fees, the taxpayer argued the contract was void, being a contract for the unlicensed practice of law and against public policy.

The court acknowledged the definition of the practice of law in Georgia to include representing litigants in court, preparing pleadings incident to any actual or special proceeding in any court or other judicial body, as well as taking any action for others in any matter connected with the law. The court, however, placed great weight on the statutory scheme that allowed a taxpayer to appear before local boards either in person or by "authorized agent" or "representative." Thus, while asserting its primacy in matters involving the regulation of the practice of law, the court implicitly accepted the notion that the General Assembly may have some say in these matters.

Furthermore, in contrast to the previous cases that emphasized that local boards were quasi-judicial bodies, the *Grand Partners* decision referred to the boards of equalization as "only" quasi-judicial. The court reasoned that quasi-judicial bodies were created by the General Assembly, and therefore the General Assembly was free to designate who could appear before those bodies. In contrast with the *Krier* (1994) decision, the court also declined to restrict the definition of "representative" as found in the statute to mean attorneys licensed to practice law in Georgia. The contract was therefore enforceable.

Tennessee

In a 1995 case, the Tennessee Supreme Court confirmed a Special Master's finding that the General Assembly of Tennessee had exercised its powers properly in allowing taxpayer representation before the Tennessee Board of Equalization by consultants and other unlicensed individuals (*In re Petition of Burson* 1995). It had been custom and practice in Tennessee for appraisers and other non-attorneys to represent taxpayers before Tennessee boards of equalization. The Tennessee Attorney General called this practice into question (Op. Tenn. Atty. Gen. 1987).

In 1988, the General Assembly of Tennessee codified the custom and practice in Tennessee Code Ann. §67-5-1514, which explicitly allowed representation by the following unlicensed agents of taxpayers: immediate family members, officers, directors or employees of a corporation, or a registered property appraiser who had satisfied certain statutory criteria (*In re Petition of Burson* 1995). The Attorney General challenged this codification, contending that the General Assembly had exceeded its authority in authorizing unlicensed individuals to practice law.

Rather than hear the case solely on the legal issue presented, the Tennessee Supreme Court appointed a Special Master to develop a factual record with corresponding conclusions of the law for review by the Supreme Court. After a special hearing, the Special Master concluded that the General Assembly had acted within its constitutional authority for the reason that practice before the various assessment tribunals was not the practice of law. Both the Special Master and the Tennessee Supreme Court acknowledged as controlling the Code of Professional Responsibilities' definition of the practice of law in Tennessee as relating to the "rendition of services for others that call for the professional judgment of a lawyer" (Tennessee State Courts 2010).

Based on the evidence presented at the special hearing, the Special Master made the following findings about the Tennessee appeal process:

- Appeals are initiated by filing a "fill-in-the-blank form" with the local board of equalization and that the only information required on the form is the identity of the property
- Following the filing of an appeal a conference with the local taxing authority usually resolves the matter
- In the event a conference is not successful, the hearing that follows before the local board of equalization is informal
- There are no formal rules of evidence at the board of equalization
- The hearings are essentially non-adversarial information-gathering sessions (*In re Petition of Burson* 1995).

Furthermore, the Special Master found that the state board of equalization, like the county board of equalization, is an informal process. There is no formal complaint form, hearings are informal, and the strict rules of evidence are not enforced. Finally, the Special Master found

> *[T]he governing authority for assessment is not the statutes and cases usually relied upon by courts and cited by attorneys. Rather, it is a manual prepared by the division of property assessment of the Office of the State Comptroller" (In re Petition of Burson* 1995*).*

Based on these findings, the Special Master concluded that none of the work involved as a taxpayer representative in Tennessee requires the professional judgment of a lawyer.

The Tennessee Supreme Court held that the findings of the Special Master were supported by the record and confirmed his conclusions of law. The court stated, "[I]t is clear that no proof was introduced to show that the services performed for taxpayers or taxing authorities before the board of equalization require the professional judgment of a lawyer."

The court's analysis in *In re Petition of Burson*, however, went beyond limiting its holding to a ruling based on the record before the Special Master. The court's analysis of the separation of powers issue is interesting. On the one hand, the court asserted its "inherent" power to regulate the practice of law based on the judicial article of the Tennessee Constitution.

On the other hand, the court acknowledged the delegation of the power to tax to the General Assembly. The Tennessee Constitution provides that "the value ... of property ... [is] to be ascertained in such manner as the legislature shall direct" (*In re Petition of Burson* 1995, quoting Tennessee Constitution, Article II Section 28). Because the court's power over the practice of law is either inherent or only implicit, the court concluded deference should be given to the explicit grant of power to the legislature and that this was broad enough that the legislature could authorize non-attorneys to assist taxpayers as to any non-judicial phase of proceedings.

Other Jurisdictions

Two examples of other courts permitting taxpayer representation by consultants and others are *In re Unauthorized Practice of Law Rules of Proposal by South Carolina Bar* (1992) and *In re Appeal of Stroh Brewery Company, etc. v. Forsyth County Board of Equalization and Review* (1994).

In *In re Appeal of Stroh Brewery,* a Michigan attorney filed an appeal with the North Carolina Property Tax Commission under a "power of attorney" signed by the taxpayer. The Michigan attorney subsequently applied to the commission and received permission to practice in North Carolina *pro hac vice* (for this occasion, used for participation in a legal proceeding by an attorney not licensed in the jurisdiction). The court ruled that the county had waived the issue of the commission's authority to admit the out-of-state attorney *pro hac vice.* The court held that the complaint was filed properly by the taxpayer's out-of-state attorney but that a North Carolina attorney was necessary for the hearing.

Implications of the Unlicensed Practice of Law

Given the split of authority among the various states in regard to these issues, uncertainty will hover over the tax assessment appeal process for the foreseeable future as unlicensed individuals and firms explore the boundaries and limitations of the unlicensed practice of law, even in jurisdictions that explicitly forbid lay representation or, as in Ohio, attempt to confine the permitted activity. The uncertainty will affect all who are involved in the process: taxpayers, attorneys, tribunals, tax representatives, and the courts.

Impact on Taxpayers

In states where taxpayer representation is the practice of law, the risk facing taxpayers who utilize tax consultants to file and prosecute appeals is that the appeal could be found to be void, being filed and prosecuted to judgment by someone not authorized to do so (known as the *nullity rule*). The preparation and filing of a complaint procured through the unlicensed practice of law has been found to vest no jurisdiction in the reviewing tribunal:

- *Spreck v. The Illinois Property Tax Appeal Board* (1999)
- *Worthington* (1999)
- *Sharon Village* (1997)
- *Clark v. Cambria* (2000)
- *Vandalia-Butler City Schools v. Montgomery Board of Taxation* (2015)
- *Speedway LLC v. Whitley County Property Valuation Administrator* (2015), upholding dismissal of complaint filed by non-attorney on behalf of a corporation.

In *Spreck*, the taxpayer's son filed an appeal on behalf of his father. Because the son was not a lawyer, the complaint was void under the nullity rule. The Illinois Appellate Court described the dire consequences of the nullity rule that result from an improper filing:

> *A pleading that is procured through the unauthorized practice of law is treated as a nullity, and if the cause proceeds to judgment under such circumstances, the judgment is void (Blue v. People* 1992*; Marken Real Estate & Management Corp. v. Adams* 1977*).*

In the recent case of *Downtown Disposal v. City of Chicago* (2012), which was not a property tax case, a bitterly divided Illinois Supreme Court (4–3) held for the first time that equitable considerations could avoid the automatic application of the nullity rule implicit in any and all legal proceedings, including property tax appeals, procured through the unlicensed practice of law. In that case the city was estopped from the application of the nullity rule when an administrative law judge explained to the president of a company that he could sue if he disagreed with the ruling that imposed a fine for a municipal code violation. The president of the company did file a complaint in the Circuit Court, which was stricken as vesting no jurisdiction in the court. The Illinois Supreme Court reversed, applying equitable principles; see "Fighting UPL after *Downtown Disposal*," suggesting the nullity rule still "has teeth" (Glasford 2013).

The nullity rule was further clarified by the Illinois Supreme Court in *Stone Street Partners v. City of Department of Administrative Hearings* (2017). In *Stone Street* the city failed to properly serve notice of a violation of a municipal ordinance. Nevertheless, a non-attorney employee of the business owner's father attended a 1999 hearing after which a judgment was entered. A decade later, upon learning that a judgment had been entered following the hearing, Stone Street Partners filed a motion to vacate the judgment and remove the cloud upon title represented by the lien. The Appellate Court found the appearance by the non-attorney who had no apparent authority to attend the 1999 hearing was a nullity and did not waive the jurisdictional defect represented by the improper service. In a 4-3 decision, the Illinois Supreme Court avoided the unlicensed practice of law issue on the grounds that the record did not show that the individual who appeared had any authority to act on behalf of the partnership. Three dissenting justices were prepared to say that appearance before the city administrative law judge is not the practice of law. This decision suggested that Illinois may soon change as Ohio did.

In *Robertson v. Town of Stonington* (2000), however, common law champerty was not recognized in Connecticut such that the court ruled that only the correctness of the assessment was before it. The court referred the unlicensed practice of law question to the statewide grievance committee, which hears unlicensed practice of law issues. See also *In re the Appeals of Stroh Brewery* (1994), which held that an appeal could be filed by an out-of-state attorney but that the prosecution of the appeal at hearing required licensed counsel.

The *Robertson* decision was cited with approval and followed in the 2014 Kansas case *In re Lyeria*, in which the court reviewed five complaints filed by non-attorneys before the Kansas Court of Tax Appeals on behalf of five different taxpayers who were not natural persons (i.e., corporations or trusts). Three of the complaints were filed in the small claims division of the Kansas Court of Tax Appeals, and two were filed in the regular division. Non-attorney employees of a consulting firm retained by the taxpayer signed and filed the appeals. Following an order of no change in the small claims division, an attorney filed a notice of appeal to the regular division of the court. One case was settled prior to the contested hearing, but the court refused to accept the stipulation, concluding a non-attorney may not sign a notice of appeal for a corporate or similar entity and therefore no timely appeal had been filed. Further, it examined the relationship between the taxpayer and consultant and concluded it was champertous.

The Kansas Appellate Court reversed; it observed that small claims complaints may be signed by attorneys, accountants, and a tax representative or agent such that jurisdiction of the small claims division was invoked properly, citing *In re Rakestraw Brothers* (2014). There was, however, no similar counterpart for the execution of regular division complaints. The court nevertheless concluded that the requirement of a signature was not jurisdictional, relying upon a separate provision of the Kansas Administrative Regulations, Article 94-5-4(b) (2011 Supp.), which allows the Kansas Court of Tax Appeals discretion to accept an otherwise insufficient complaint. The court reasoned that a deficient complaint must confer jurisdiction in order for the Court of Tax Appeals to have power to accept it or not. As a result, the failure to present a properly signed complaint did not deprive the Court of Tax Appeals of jurisdiction. Finally, as in *Robertson* (2000), the court observed that although the Court of Tax Appeals was a quasi-judicial body, it only had jurisdiction to consider the correctness of the assessment. With regard to concerns about the unlicensed practice of law, the court used the following language:

> *[W]e do not suggest that members of the Court of Tax Appeals are prohibited from reporting potential violations of attorney ethics rules to the proper authorities. Indeed, lawyer members of the court may have a duty to do so under the Kansas Rules of Professional Conduct. ... But the Court of Tax Appeals as a body has no authority to decide such matters. (In re Lyeria 2014)*

Impact on Lawyers

There are many risks of the unlicensed practice of law to lawyers. When an attorney is hired by a taxpayer representative, the attorney may be forming an ill-conceived relationship in which the lawyer is sharing fees impermissibly with a non-lawyer as well as aiding and abetting the unlicensed practice of law.

Splitting fees is another area in which attorneys are at risk when working with a consultant. In *In re Gaffen* (2002), an attorney who split fees with a disbarred lawyer through a consulting firm was suspended; see also ISBA (1994), it is improper for a lawyer to pay a "marketing" or "consulting" fee to a nonlawyer who refers tax appeals to the lawyer, and Florida Bar Association (1964), it is improper for attorney to accept employment from real estate broker who solicits tax clients and employs the lawyer.

Moreover, the attorney who is hired by the consultant is confronted with the situation of conflicting loyalties. As a matter of contrast, does the attorney represent the tax consultant or the taxpayer? The attorney should be mindful because case law suggests that the true attorney–client relationship is absent as far as the attorney and the taxpayer are concerned in such a circumstance (*People v. Goodman* 1937). Thus, there would be no attorney–client privileged communications between the attorney and the taxpayer, thereby raising the possibility of some interesting discovery issues in such matters, including the protection of attorney work product.

Impact on Unlicensed Individuals

The numerous risks to tax representatives performing tax appeal work are readily apparent. First, virtually every jurisdiction makes it a crime to practice law without a license; unauthorized practice may be enjoined. In *Ohio State Bar Assn. v. Ryan LLC* (2013), the court enjoined Ryan LLC from all activities that constitute the practice of law, including representation in any court or forum requiring representation by licensed attorneys, preparation of legal documents, and rendering of legal advice regarding legal documents. Second, at least 31 states have a false claims act such that filing a claim for an assessment reduction through the unlicensed practice of law could be a false claim (Pietragallo Gordon Alfano Bosick Raspanti LLP 2017). Last, a contract for the unlicensed practice of law is unenforceable. The tax consultant therefore may not get paid for the work. In *Gallagher* 1992, a contract between a taxpayer and a consultant for representation before the county board of taxation was unenforceable because it was a contract for the unlicensed practice of law.

Impact on Tribunals and Courts

The uncertainty surrounding the unlicensed practice of law in property tax assessment appeals is also problematic for assessment tribunals and courts. First, tribunals must be concerned with the proper invocation of their jurisdiction to act. As shown in the Illinois, Ohio, and Pennsylvania cases, an improper filing may not vest the tribunal with jurisdiction so that any ruling on the merits is void. Second, hearing officers who happen to be lawyers have a duty not to aid and abet unlicensed practice. The hearing officer in *Richman* (2014) who allowed a non-attorney to examine witnesses was criticized by the court. Last, the matter is of concern to the courts, which not only must regulate the practice of law but also enjoin the unlicensed practice of law, as in the case of *Ryan LLC*. When the court finds that an attorney is in an ill-conceived relationship with a tax consultant, the court has the obligation to report the ethical misconduct of the attorney; see *Model Code of Judicial Conduct*, Canon 3, Rule 2.15 (ABA 2001) and *In re Lyeria* (2014), members of the Kansas Court of Tax Appeals had a duty to report potential violations of attorney ethics.

Because issues of the unlicensed practice of law involve state law, the supreme courts of each state are free to decide these issues *seriatim* (in a series) and are not bound by precedent from other jurisdictions. The divergent opinions expressed by the various courts thus far are consistent only with the divergence of opinions expressed by those on each side of the issue.

The Prospects for a Uniform Rule

Embedded in the debate is the notion that unlicensed individuals are just as smart as, if not smarter than, lawyers when it comes to knowledge of market value, which frequently is the basis of a property tax assessment appeal. Because lawyers do not have a monopoly on knowledge of market value, the argument is that lawyers should not have a monopoly upon taxpayer representation. As such, protection of the public is not a paramount concern; rather, it is to be balanced by the expedience of allowing unlicensed but

otherwise *qualified* providers to participate in order to drive down costs. (The fact that many occupations are licensed in order to "protect the public" has likely fueled public skepticism that protection of the public is not the real reason for licensure but is a convenient excuse used by those seeking to monopolize their occupation [*The Economist* 2011]. While that perception may have validity in the context of interior decorators or florists, protection of the public always has been and is a paramount consideration for the legal profession. In *Schware* [1957], the Supreme Court affirmed, "that all the interests of man that are comprised under the constitutional guarantees to 'life, liberty and property' are in the professional keeping of lawyers." These are serious responsibilities.)

However, this falsely equates a tax representative's knowledge or expertise in determining value (which might make one an expert witness) with a lawyer's skill and training necessary to file and prosecute an appeal within the statutory framework set forth by the legislature. Furthermore, legislation like that in Ohio raises the question, who and under what circumstances is one sufficiently qualified to practice law without a license?

Existing state requirements vary. In Arizona applicants need only verify that they have not been convicted of a felony or crime of moral turpitude within the last 10 years and are lawfully in the United States (Arizona Department of Financial Institutions 2017). There are no general statewide registration requirements for property tax agents in California, although Los Angeles County requires agents to register and pay a fee (County of Los Angeles 2017). A 2014 proposal to require statewide registration failed when vetoed by the governor (California Legislative Information 2017). In Texas, a consultant must be a high school graduate and pass an examination after completing 40 hours of classroom education including 8 hours on the laws and the rules relating to property tax consulting, 16 hours on appraisal and valuation, 8 hours on property tax consulting, and 8 hours of ethics (Texas Department of Licensing and Regulation 2015).

If assessment appeal work is as simplistic as some maintain, another question is, at what level of competence should the bar be set? Furthermore, legislative activity necessarily encroaches upon the judiciary's plenary power to regulate the practice of law raising the additional question, which branch should set the standard? The new rule in Washington state regarding limited license technicians bears watching (Washington Courts 2012). It contains many safeguards designed first and foremost to protect the public and may produce a common and balanced ground, albeit a narrow and restricted one. The Washington model also best affords a tax representative the chance to gain the skill and expertise necessary to be competent in tax appeal work under the supervision of licensed lawyers. Until there are sufficient data from the Washington experience, the *Richman* concurrence summarizes best why taxpayer representation in property tax appeals is better left to lawyers:

> *[F]rom a public-policy standpoint, the proscriptions on the unauthorized practice of law are clearly designed to protect the unsuspecting 'clients' of would-be lawyers. As demonstrated by the case before us, BTA [Board of Tax Appeal] cases are sophisticated proceedings, full of legal traps for the unwary, in which millions of dollars of tax money are potentially at stake. This is not small claims court. The tax base of a community and the economic viability of a corporation's bottom line can be significantly impacted and it's essential that the rule of law prevail. To permit a person with no legal training to present legal arguments, conduct cross-examination, and perform as a counselor in such a setting is a very serious matter indeed.*

Conclusion

The law in regard to issues of the unlicensed practice of law in real estate tax appeals will continue to vary on a state-by-state basis. There is no uniform rule, but the Washington experience regarding limited license technicians may yield a reliable basis for one in the future. Even in jurisdictions that provide statutory authority for taxpayer representatives, the issue will not be free from doubt, especially as boundaries are pushed. Everyone involved in the tax assessment appeal process must be cognizant of this issue so that appropriate conduct is observed, ill-defined relationships and unintended consequences can be avoided, and the public interest is protected.

References

ABA (American Bar Association). 2003. "Task Force on the Model Definition of the Practice of Law Standing Committee on Client Protection Washington State Bar Association Report to the House of Delegates," August 11. http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/recomm.authcheckdam.pdf.

ABA. 2005. *"*Unauthorized Practice of Law: New ABA Survey of UPL Enforcement Finds Varied Funding, Predicts Increased Activity*," ABA/BNA Lawyers Manual on Professional Conduct,* January 12*,* §21:23. http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2015_upl_report_final.authcheckdam.pdf.

ABA, Ad Hoc Committee on Multidisciplinary Practice. 1999. "Report and Recommendations of the ABA Commission on Multidisciplinary Practice–Center for Professional Responsibility," memorandum, August 4. https://www.americanbar.org/groups/professional_responsibility/commison_multidisciplinary_practice/mdpfindrep2000htmlJuly 2000.

ABA, Center for Professional Responsibility. 2001. *Model Code of Judicial Conduct*, Canon 3, Rule 2.15. https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html.

*Apex Oil v. Hankhaus*_118 Ill 3d 273, 454, NE 1032 (5th Dist 1983).

Arizona Department of Financial Institutions. 2017. "Property Tax Agent Registration." https://boa.az.gov/property-tax-agent-registration.

Arkansas Bar Association v. Block, 323 S.W. 2d 912 (1959).

Blue v. People, 223 Ill. App. 3d 594, 596 585 N.E. 2d 625, 626 (1992).

Board of Education v. Franklin County Board of Revision, 2015 Ohio Tax Lexis 3881 (Ohio Bd. of Tax Appeals 2015).

Board of Overseers of the Bar v. Morgan, 763 A. 2d 1189 (Me. 2001).

Bump v. Barnett, 235 Ia. 308, 16 N.W. 2d 579 (1944).

Bump v. District Court of Polk County, 5 N.W. 2d at 914 (IA 1942).

California Legislative Information. 2017. "AB-2415 Property tax agents (2013–2014)." http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2415.

Carpenter, D.M., L. Knepper, A.C. Erickson, and J.K. Ross. 2012. *License to Work: A National Study of Burdens from Occupational Licensing.* Arlington, VA: Institute for Justice. http://ij.org/report/license-to-work/.

Chicago Bar Association v. Friedlander, 24 Ill. App. 2d 130, 164 N.E. 2d 517 (1st Dist. 1960).

Chicago Bar Association v. Quinlan and Tyson, 34 Ill. 2d 116, 214 N.E. 2d 771 (1966).

Chicago Law Bulletin. 2013. "'Attorneys only' beyond this Lake County point." 1: 24. https:www.chicagolawbulletin.com/archives/2013/03/27/lake-3-27.

Cippolone v. City of White Plains, 581 NYS 2d 421 (A.D.2 Dept. 1992).

Clark v. Austin, 340 Mo. 467, 101 S.W. 2d 977 (1937).

Clark v. Cambria County Board of Assessment Appeals, 747 A. 2d 1242 (Pa. Cmwlth 2000).

Cleveland Bar Association v. Middleton, 66 Ohio Misc. 2d 916, 642 N.E. 2d 71 (1994).

Cocon v Botnick Building Co., 59 Ohio App 3d 42, 570 N.E. 2d 303 (1989).

Columbus City School District Board of Education v. Franklin County Board of Revisions, 134 Ohio St. 3d 529, 983 N.E. 2d 1285 (2012).

Columbus City Schools v. Franklin County Board of Revision, 2015 Ohio Tax Lexis 4086 (Ohio Bd. of Tax Appeals 2015).

County of Los Angeles. 2017. "Assessment Appeals Board: Tax Agent and Online Filing User Registration." lacaab.lacounty.gov/TaxRegistration.aspx.

Crawford v. McConnell, 49 P. 2d at 551 (Okla. 1935).

Dauphin County Bar Association v. Mazzacaro, 465 Pa. 545, 351 A. 2d 220, 223 (1976) .

Dayton Supply & Tool Co. v. Montgomery County Board of Revision, 111 Ohio St. 3d 367; 856 N.E. 2d 926 (2006).

Dent v. West Virginia, 129 U.S. 114, 121-22 (1889).

Downtown Disposal v. City of Chicago, 979 N.E. 2d 50, 2012 IL 112040 (Ill. 2012).

Dressel v. Ameribank 635 N.W. 2d 328 (Mich App 2003).

Edwards v. District of Columbia, 755 F.3d 996 (D.C. Cir. 2014).

Ellis, E. 2000. "Allerton House Conference 2000: MDPs and the Legal Profession," *Illinois Bar Journal* 8(11): 609–672. https://www.isba.org/ibj/2000/11/allertonhouseconference2000mdpsandt (accessed May 12, 2017).

Felice, R.D. 2015. "More States Consider Licensing Legal Transactions." *Illinois Bar Journal* 103(5): 8. https://www.isba.org/ibj/2015/05/morestatesconsiderlicensinglegaltec.

Florida Bar v. Moses, 380 So. 2d 412 (1980).

Florida Bar Association. 1964. "Professional Ethics of the Florida Bar," Ethics Opinion 64-29. https:www.floridabar.org/etopinion-64-29.

Ford Motor Company v. Testa, 2015 Ohio Tax Lexis 2600, (Ohio Bd. of Tax Appeals 2015).

Fought & Co. v. Steel Engineering, 951 P. 2d 487 (Hi. 1998).

FTC (Federal Trade Commission). 2007. Proposed Section 2-44A of the Rules of the Superior Court entitled "Definition of the Practice of Law," letter to Connecticut Superior Court, May 17. https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-mr.carl-e.testo-counsel-rules-committee-superior-court-concerning-proposed-rules-definition-practice-law/v070006.pdf (accessed May 14, 2107).

FTC and DOJ (Department of Justice) 2002. "Comments on the American Bar Association's Proposed Model Definition of the Practice of Law," letter to the American Bar Association, December 20. https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law (accessed May 14, 2017).

FTC and DOJ. 2003. "Amici Curiae Brief On Review of UPL Advisory Opinion No. 2003-2 Concerning the Unlicensed Practice of Law in Georgia (Supreme Court of Georgia) (Case No. S03U1451)." July. https://www.ftc.gov/policy/policy-actions/advocacy-filings/2003/07/ftc-and-department-justice-amici-curiae-brief-review (accessed May 14, 2017).

FTC and DOJ. 2004. "Comments on Draft Proposed Definition of the Practice of Law in Massachusetts," letter to Massachusetts Bar Association, December 16. https://www.justice.gov/atr/comments-draft-proposed-definition-practice-law-massachusetts (accessed May 14, 2017).

FTC and DOJ. 2009. "Comments on Revised Proposed Rule Concerning Unauthorized Practice of Law," letter to the Hawaii Supreme Court, April 20. https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-and-department-justice-comment-supreme-court-hawaii-concerning-proposed-definition-practice-law/v080004hiunauthorizedpracticeoflaw.pdf (accessed May 14, 2017).

Gaboney v. Emire Storage, 336 U.S. 490, 502 (1949).

Gallagher v. First Dependable Mortgage Co., Inc., 605 A. 2d at 785 (NJ 1992).

Glasford, K. 2013. "Fighting UPL after Downtown Disposal." *Illinois Bar Journal* 101(11): 574–579.

Goodfriend v. Board of Appeals of Cook County 18 Ill. App. 3d 412, 305 NE 2d 404 (1st Dist 1973).

Grand Partners Joint Ventures I v. Real Tax Resource Inc., 225 Ga. App. 409, 483 S.E. 2d 922 (Ga. 1997).

Hanna, J. 2014. "Bill Would Let Nonlawyers represent Taxpayers in County Tax Appeals." *Illinois Bar Journal* 102 (5): 214 https://www.isba.org/ibj/2014/05/lawpulse/billwouldletnonlawyersrepresenttaxp.

Heinze v. Giles, 22 Ohio St. 3d 213, 410 N.E. 2d 585 (1986).

Hunt v. Maricopa County, 127 Ariz. 259, 619 P. 2d 1036 (1980).

Illinois Bar News. 1992. "Illinois State Bar Association Policy on Real Estate Tax Practice." *Illinois Bar News* 32(22): 2. https://www.isba.org/newscenter.

Illinois Courts, Illinois Supreme Court. 2010. "Article VII, Illinois Rules of Professional Conduct, Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law." http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/ArtVIII_NEW.htm#5.5

Illinois General Assembly. (n.d.) Illinois Compiled Statutes (35 ILCS 200/), Property Tax Code, Sections 9-75; 9-85; 16-55; 16-95. http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=596&ChapterID=8.

ISBA (Illinois State Bar Association). 1994. "Professional independence; fee splitting; solicitation; unauthorized practice of law," *ISBA Advisory Opinion on Professional Conduct 94-8*, September. https://www.isba.org/sites/default/files/ethicsopinions/94-08.pdf (accessed May 15, 2017).

In re Appeal of Stroh Brewery Company, etc. v. Forsyth County Board of Equalization and Review, 116 NC App. 178, 447 S.E. 2d 803 (1994).

In re Application of Rosewell v. Ford Motor Company 131 Ill. 2d 541, 546 N.E. 2d 506 (1989).

In re Flack, 272 Kan. 465, 33 P. 3d 1281, 1287 (2001).

In re Gaffen, M.R. 18285 (Ill. Sup. Ct. 2002).

In re Lerner, 124 Nev. 1232, 197 P 2d 1067 (2008).

In re Lyeria, 50 Kan. App. 2d 1012, 336 P. 3d 882 (2014).

In re Nolo Press, 991 S.W. 2d 768 (TX 1999).

In re Petition of Burson, 909 S.W. 2d 768 (Tn. 1995).

In re Rakestraw Brothers, 337 P. 3d 62 (2014).

In re Shoe Manufacturers Protective Association, 295 Mass 369, 372 (1936).

In re Unauthorized Practice of Law Rules of Proposal by South Carolina Bar, 309 S.C. 304, 422 S.E. 2d 123, 124 (1992).

In re Yamaguchi, 118 Ill. 2d 417, 515 N.E. 2d 1235 (1987).

Iowa Supreme Court Commission on Unauthorized Practice of Law v. Sturgeon, 635 N.W. 2d 679 (Ia. 2001).

Kagan v. City of New Orleans, 753 F.3d 560 (5th Cir. 2014).

King v. First Capital Services, 215 Ill. 2d 1 (2005).

Koscove v. Bolte, 30 P. 3d 784 (Colo. App. 2001).

Krier v. Franklin County Board of Revision, 100 Ohio App. 3d 344, 654 N.E. 2d 122 (1994).

Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, 313, 193 N.E. 2d 650.

Lowe v. S.E.C. 472 U.S. 181 (1985).

Marken Real Estate & Management Corp. v. Adams, 56 Ill. App. 3d 426, 430, 371 N.E. 2d 1192, 1195 (1977).

Marshall Steel v. Nanticoke Memorial Hospital, 1999 WL 458724 (Del. Super. 1999).

McArdle, M. 2016. "Licensing interior decorators? Let's nix state-approved cartels." *Chicago Tribune*, May 23. http://www.chicagotribune.com/news/opinion/commentary/ct-unnecessary-occupational-licensing-20160522-story.html (accessed May 12, 2017).

McCullough, M. 2015. "Compact Aims To Help Doctors Practice across State Lines," *Philadelphia Daily News Digital Replica Edition*, November 3. http://www.philly.com/philly/health/20151103_Compact_aims_to_help_doctors_practice_across_state_lines.html (accessed May 12, 2017).

Megaland GP LLC v. Franklin County Bd. of Revision, 145 Ohio St. 3d 84, 47 NE 3d 117 (2015).

Nascar Holdings, Inc. v. Testa, 2015 Ohio Lexis 2580 (Ohio Bd. of Tax Appeals 2015).

Neuman v. Franklin County Board of Revision), 2014 Ohio Tax Lexis 4267, (Ohio Bd. of Tax Appeals 2014).

Ohio State Bar Association. 2005. *Report of the Task Force on the Unauthorized Practice of Law*. Council of Delegates Meeting, May. https://www.ohiobar.org/Council%20of%20Delegates/pubs/Spring_2005_Task_Force_on_UPL_Report.pdf (accessed May 14, 2017).

Ohio State Bar Assn. v. Ryan LLC, 138 Ohio St 3d 67, 3 N.E. 3d 94 (2013).

Opinion No. 25, Committee on the Unauthorized Practice of Law 130 N.J.L.J., 115 (1992) and *Supplement to Opinion No. 25*, 143 N.J.L.J., 542 (1996).

Opinion of the Justices, 289 Mass. 607 (1935).

Op. Tenn. Atty. Gen. No. 87-58 (April 2, 1987); No. 87-183 (Dec. 8, 1987).

People ex rel. Bar Association v. Schaeffer, 404 Ill. 2d 45, 187 NE 2d 773 (1950).

People ex rel. Devine v Murphy 181 Ill 2d 522, 532-33 (1978).

People v. Goodman, 366 Ill. 346, 9 N.E. 2d (1937).

People v. Shall, 148 P. 3d 162, 174 (Col. 2006)

Pietragallo Gordon Alfano Bosick Raspanti LLP. 2017. "False Claims Act Resource Center: State False Claims Act." http://www.falseclaimsact.com/states-municipalities-fcas.

Pioneer Title v. State Bar, 74 Nev. 186, 326 P. 2d 408 (1958).

Powers, M. 2015. "Iowa Hair Braiders File Lawsuit Challenging State Cosmetology Licensing Requirements," press release, Institute for Justice, October 28. http://ij.org/press-release/iowa-hair-braiders-file-lawsuit-challenging-state-cosmetology-licensing-requirements/ (accessed May 12, 2017).

Preston v. Stoops, 373 Ark. 591, 285 S.W. 3d 606 (2008).

Property Valuation Analysts v. Williams, 563 NYS 2d. 545 (A.D.3 Dept. 1990).

Richard F. Mallen & Associates Ltd. v. Myinjuryclaim.com Corp., 329 Ill. App. 3d 953 (1st Dist. 2002).

Richman Properties LLC v. Medina County Board of Revision, 139 Ohio St. 549, 13 N.E. 3d 1126 (2014).

Roberts v. LaConey, 375 S.C. 97, 650 S.E. 2d 474, 477 (2007).

Rubenstein, D. 1997. "`Big Six Poised to Enter Legal Market." *Illinois Legal Times* 11(126).

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957).

Sharon Village Ltd. v. Licking County Board of Revision, 78 Ohio St. 3d 479, 678 N.E. 2d 932 (1997).

Shenandoah Sales & Service v. Assessor, 228 W. Va. 762 (2012).

Speedway LLC v. Whitley County Property Valuation Administrator (Kentucky Board of Tax Appeals, No. K-24886 (2015).

Spreck v. The Illinois Property Tax Appeal Board (Docket 5-99-0676, 5th District Ill. App. 1999).

State Bar of Arizona v Arizona Land Title and Trust 366 P 2d 1, 9 (Ariz 1961).

State ex re Florida Bar v. Sperry, 140 S. 2d 587, 591 (1962).

State ex rel. Indiana State Bar Association v State Board of Tax Commissioners (No. 49900-9810-OR-543 (1999).

State ex rel. Perkins, 138 Kan. 899, 28 P. 2d 765 (1934).

State ex rel. Reynolds v. Dinger, 14 Wis. 2d 193, 109 N.W. 2d 685 (1961).

Stephens Production Company v. Bennett, 2015 Ark. App. 617; criticized, "Corporate Self-Representation: Is It Truly the Unauthorized Practice of Law," 67 Ark. L. Rev. 371 (2014).

Stone Street Partners v. City of Department of Administrative Hearings, 2017 IL 117720.

Susman v. Grado, 92 Misc. 2d 628, 746 N.Y.S. 2d 548, 552 (NY 2002).

Tennessee State Courts. 2010. "Rule 8: Rules of Professional Conduct." http://www.tsc.state.tn.us/rules/supreme-court/8#top.

Texas Department of Licensing and Regulation. 2015. "Property Tax Consultants: Occupations Code." https://www.tdlr.texas.gov/ptc/ptclaw.htm.

The Economist. 2014. "The best and worst states for small business: Red tape blues." July 3. http://www.economist.com/news/united-states/21606293-small-businesses-fret-less-about-taxes-over-regulation-red-tape-blues (accessed May 12, 2017).

The General Assembly of Pennsylvania. 2015 "Modernization of the Professional Nursing Law," Senate Bill 717. http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2015&sessInd=0&billBody=S&billTyp=B&billNbr=0717&pn=1996 (accessed May 12, 2017).

Unauthorized Practice of Law: The full service bank that was: Bank Cashier enjoined etc. 61 Ky. L. J. 300 (1972).

Vandalia-Butler City Schools v. Montgomery Board of Taxation (Ohio Board of Tax Appeals No. 2014-4414 and 4415 (2015).

Washington Courts. 2012. "Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters," press release, June 15. http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=2136 (accessed May 12, 2017).

Waterloo Farms, Inc. v. Athens County Board of Revision, 2016 Ohio Tax Lexis 1702 (Ohio Bd. of Tax Appeals 2016).

Waugh v. Nevada State Board of Cosmetology, 36 F. Supp. 3d 991 (D. Nev. 2014).

West Virginia State Bar v. Earley, 144 W.Va. 504, 1095 S.E. 2d 420 (1959).

Westerville City Schools v. Franklin County Board of Revision, 2015 Ohio Tax Lexis 4012 (Ohio Bd. of Tax Appeals 2015).

Westmoreland County v. Rodgers, 693 A. 2d 996 (Pa. Cmwlth 1997).

Westmoreland County v. RTA Group Inc., 767 A. 2d 1144 (Pa. Cmwlth 2001).

Worthington City School District Board of Ed v. Franklin County Board of Revision, 85 Ohio St. 3d 156 (1999).

Wilson, J.J. 2008. "Maryland Entrepreneur Files Lawsuit Challenging Veterinary Cartel," press release, Institute for Justice, June 10. http://ij.org/press-release/maryland-animal-massage-release-6-10-08/ (accessed May 12, 2017).

Witt Company v. Hamilton County Board of Revision, 61 Ohio St. 3d 155, 573 N.E. 2d 661 (1991i, 59 Ohio App. 3d 42, 570 N.E. 2d 303 (1989).