The Corporation and the Practice of Law

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The principle of protection by procedural due process is more easily recognized at public universities because they are similar to state agencies and as such must follow constitutional rules of procedural due process.\textsuperscript{26}

The area of higher education is of such vital public concern that its deprivation by any authority should be predicated upon conformity to constitutional guarantees of procedural due process. In recognition of the seriousness of expulsions for misconduct a tentative statement of policy has been forwarded by the American Association of University Professors which calls for both notice and hearing without mention of different standards for private as opposed to public schools.\textsuperscript{26} Although strict procedural requirements are not necessary, the lack of notice and hearing, as in the instant case, are ample grounds for relief for a violation of due process and should be considered as such both at public and private universities.

TIMOTHY G. ANAGNOST

THE CORPORATION AND THE PRACTICE OF LAW

The Plaintiff, a corporation, filed a complaint signed by the plaintiff's president above the name of the corporation.\textsuperscript{1} Defendants moved to dismiss for failure to state a cause of action and to strike the complaint upon the ground that it had not been signed by a licensed attorney.\textsuperscript{2} The plaintiff then moved to amend the complaint by striking the name of the corporation and the signature of its president and inserting the signature of counsel. The trial court granted the defendants' motion to strike the complaint and denied the plaintiff's motion to amend on the ground that a corporation cannot appear or sign a pleading in proper person and that a complaint which was signed by the president of a corporation who was not an attorney\textsuperscript{3} was a nullity and therefore not amendable. On appeal, held, affirmed: a complaint filed by a plaintiff corporation through its president, which does not bear the signature of an attorney, is a nullity and may not be amended after the expiration of the statutory time for foreclosing a

\textsuperscript{25} "[N]or shall any State deprive any person of life, liberty, or property without due process of law . . . ." U.S. Const. amend. XIV, § 1.


1. The record indicates that the complaint was actually prepared by a licensed attorney who would not sign it. No reason was given for his refusal to sign.

2. Rule 1.5 of the Fla. Rules of Civil Procedure, in effect at the time of the filing of this case, provides in part:
   (a) Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name . . . .

3. The fact that the corporation's president was not an attorney was not discussed in the appellate court's opinion. The question does not appear to have been considered.
lien by striking the name of the plaintiff corporation and the signature of its president and affixing in lieu thereof the signature of counsel who appeared for the plaintiff after the filing of the complaint. *Nicholson Supply Co. v. First Federal Savings and Loan Association*, 184 So.2d 438 (Fla. 2d Dist. 1966).

A Corporation, though in reality an artificial entity, is regarded by the law as a natural person for many purposes. As such, it is entitled to many of the rights and privileges guaranteed to persons by constitutions, statutes or other legal provisions, unless the subject matter under consideration deals explicitly with natural persons only. Where there is doubt concerning the applicability to artificial persons, the answer is necessarily obtained by judicial interpretation. Therefore, it is generally held that a corporation, while not entitled to the protections granted to citizens under the privileges and immunities clause of the fourteenth amendment, may claim most of the benefits afforded by the due process clause of the same amendment, particularly where property rights are concerned.

In one important respect, however, the artificial person is not entitled to a right normally granted under the due process clause. The rule appears to be universally adopted that a corporation may not practice law. This is the common law rule which stems from an early judicial distrust of the corporate entity and the profit-minded men who directed them. The prohibition is based upon the judiciary’s idea that an attorney must have specialized knowledge, skill and training, and be able to maintain a relationship of trust and confidence with his client while being directly

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4. Evidently, the time for foreclosing the lien passed while the appeal was pending. No mention is made of the time element in the trial court's holding.


6. The general rule of construction is that the term “person” is generic and will include both artificial and natural persons whenever this is necessary to give effect to the reason and spirit of the provision. *Id.*


12. Were it possible for corporations to prosecute or defend actions in person, through their own officers, men unfit by character and training, men, whose credo is that the end justifies the means, disbarred lawyers or lawyers of other jurisdictions would soon create opportunities for themselves as officers of certain classes of corporations and then freely appear in our courts as a matter of pure business, not subject to the ethics of our profession or the supervision of our bar associations and the discipline of our courts.

subject to the court's discipline. These requirements cannot be fulfilled by a corporation.

The courts, while agreeing that corporations cannot practice law, have not been able to agree as to what acts constitute the practice of law. The widest divergence has come when the practices complained of are carried on outside the courtroom. Some jurisdictions have decided that the artificial entity, like the natural person, may perform acts which would constitute legal practice when the benefit is solely for the corporation. The reasoning appears to be that no harm will come to the public since any injury caused by error will be borne only by the corporation. A number of other courts, however, have held that any acts performed for the corporation, or for others, which constitute the practice of law (according to the particular court's definition), are prohibited. Apparently, this distinction is based on the belief that an act done solely for the corporation's own benefit will eventually affect other persons in some way. Other jurisdictions have allowed some legal services to be performed if they were insubstantial and incidental to commercial services normally provided by the corporation. Most courts have generally held, however, that there is no valid distinction between simple and complex legal tasks.

A different problem arises when a corporation attempts to invoke any of the court's mechanisms or processes. When this occurs, the rule forbid--

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14. "[A]nyone who assumes the role of assisting the court in its processes or who invokes the use of its mechanisms is considered to be engaged in the practice of law." *Arkansas State Bar Ass'n v. Union Nat'l Bank*, 224 Ark. 48, 51, 273 S.W.2d 408, 411 (1954). "The question is whether the defendants, acting through employees, performed acts, in or out of court, commonly understood to be the practice of law." *State Bar Ass'n v. Connecticut Bank & Trust Co.*, 145 Conn. 222, 229, 140 A.2d 863, 870 (1958). The lower court had held that, in order to constitute the practice of law, the acts must be performed for someone else. 20 Conn. Supp. 248, 131 A.2d 646 (1957). See also *Merrick v. American Security & Trust Co.* 107 P.2d 271, 278 (1959), and *The Florida Bar v. Keehley*, 190 So.2d 173 (Fla. 1966).
ding the corporate practice of law has been consistently applied.\textsuperscript{22} In this situation, there is no subtle overlapping of commercial and legal services and no argument of whether the practice of law is involved; the corporation stands before the court. The prohibition has frequently been enforced in the face of a legislative act purporting to extend such privileges to previously unauthorized persons or groups.\textsuperscript{23} Although some courts have allowed the statutory authorization to stand,\textsuperscript{24} most have ruled that it is within the inherent province of the judiciary to prescribe the qualifications for admission to the practice of law.\textsuperscript{25} However, by statutory exception to the general rule, some jurisdictions have permitted corporations to appear in proper person before courts which are not of record.\textsuperscript{26} Many law firms have incorporated under recent statutes enacted to allow attorneys to incorporate so that federal income tax benefits might be realized.\textsuperscript{27}

Although the decisions have generally held that a corporation may not appear before the court\textit{ in propria persona}, it is evident that this frequently happens. When the fact has been objected to by the opposing party or recognized by the court, a problem arises as to what effect this improper presence will have upon the proceedings or any judgments previously rendered. Many judges have stated that all of the proceedings are void, and some have so held.\textsuperscript{28} However, in many cases, the court has perceived the presence of the unrepresented corporation but allowed the action to continue with a binding effect upon the parties.\textsuperscript{29}


\textsuperscript{25} E.g., State Bar v. Arizona Land Title & Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961); State Bar Ass'n v. Connecticut Bank & Trust Co., 145 Conn. 222, 140 A.2d 863 (1958); cases cited note 24 supra.


\textsuperscript{27} \textit{Compare In re} The Florida Bar, 133 So.2d 554 (Fla. 1961), with State \textit{ex. rel.} Green v. Brown, 173 Ohio St. 114, 180 N.E.2d 157 (1962).


\textsuperscript{29} Schifrin v. Chenille Mfg. Co., 117 F.2d 92 (2d Cir. 1941). In several cases, the unrepresented corporation was allowed to continue an un-
instances, the court has noted that it has the authority to dismiss the action but has granted the corporation time to obtain an attorney on the ground that dismissal is a drastic remedy which is unduly harsh under normal circumstances. Thus, although many judges have indicated that such proceedings might be void, it is not often that they have so ruled.

The instant case leaves many questions unanswered. Although it is clear that the court considered the complaint filed by the corporation to be an unamendable nullity, it is not clear that the ruling would have been the same if the subscribing corporate president had been an attorney or if the statute of limitations had not been involved. In holding that the complaint is void, the Florida court has adopted a rule which finds most of its authority in dictum. Further, the decision appears to be contrary to the Florida rule requiring liberality of amendment to complaints when the basic cause of action is not thereby altered. If, as indicated by the language of the holding, the ruling was based partly on the fact that the time for foreclosing the lien had passed, the court did not follow the established view that amendments relate back to the time the original complaint was filed when a statute of limitations would otherwise preclude the action.

Florida has placed itself squarely within the oft-stated rule that a corporation cannot practice law. It is submitted that the rule forbidding corporations from appearing in proper person before the courts is justified and should be followed in Florida. However, it is also submitted that a complaint signed by an unknowing corporative official should be treated in the same manner as any other defective pleading. The corporation should be granted an opportunity to correct its mistake in accordance with the applicable rules of procedure.

The decision in the instant case is especially harsh because the corporation is precluded from any further action since the time for foreclosure has passed. The central issue is not whether a corporation has a right to practice law, but whether it has a right to amend a defective complaint.

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favorable decision, attempted to have the ruling set aside on the ground that it was void because of its own lack of representation. The courts have refused to accept the argument.


31. See cases cited notes 30 and 31 supra.

32. Supra notes 3 and 4. The disparity in the stated holdings of the trial and appellate courts clouds the issue. The tenor of the opinion indicates that the complaint would have been a nullity even if the corporate president had been a licensed attorney. One case cited in the opinion, however, implies that in order for a corporation to practice law in person before a small claims court, as authorized by statute, the officer handling the case must be an attorney. Tuttle v. Hi-Land Dairyman's Ass'n, 10 Utah 2d 195, 350 P.2d 616 (1960).

The fact that the time for foreclosing the lien had passed was not discussed in the court's opinion, but stated in the holding.

33. But see In re The Florida Bar, 133 So.2d 554 (Fla. 1961).