Digest of Arkansas Decisions On the Unauthorized Practice of Law

The Practice of Law:

> It has been said in many opinions that it is not possible to give a definition of what constitutes practicing law that is satisfactory and all inclusive, and we make no such attempt. We do hold however that when one appears before a court of record for the purpose of transacting business with the court in connection with any pending litigation or when any person seeks to invoke the processes of the court in any matter pending before it, that person is engaging in the practice of law. To us this conclusion is obvious. Courts are constituted for the purpose of interpreting and administering the laws passed by the law making body and the rules announced by the judiciary, and they must necessarily be governed in their operation by rules of procedure. Attorneys are officers of the court and are able by special training and practice to know the law and rules of procedure, and are thereby in position to render a service to the court. Therefore anyone who assumes the role of assisting the court in its process or invokes the use of its mechanism is considered to be engaged in the practice of law.
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> We make it clear at this point that we are not holding that other activities aside from appearing in court do not constitute practicing law. It is uniformly held that many activities, such as writing and interpreting wills, contracts, trust agreements and the giving of legal advice in general, constitute practicing law.

Ark. Bar Assoc. v. Union Nat'l Bank, 224 Ark. 48, 53-54, 273 S.W.2d 408, 411-412 (1954).

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> This prohibition by us against others than members of the Bar of the State of Arkansas from engaging in the practice of law is not for the protection of the lawyer against lay competition but is for the protection of the public. The rights bestowed upon citizens of this country by the law and those rights inherent in the citizenship are the gauge of our freedom and of our civilized progress. They must

> be prized as such and the reciprocal obligation to honor the rights of others must be respected. Due respect for these rights and obligations requires that at all times they be susceptible of definition. This proposition lies at the very foundation of our system of law. The public interest, therefore, requires that in the securing of professional advice and assistance upon matters affecting one's legal rights, one must have assurance of competence and integrity and must enjoy freedom of full disclosure, with complete confidence in the undivided allegiance of one's counselor in the definition and assertion of the rights in question. It is to meet the requirements of public interest that high standards of training and competence are fixed for those who would practice law, and that they practice under a strict code of professional ethics and are made answerable to the courts as court officers for the manner in which they meet their professional obligations. The legal profession has, through acceptance of its obligations, traditionally become imbued with a spirit of public service. The bench and bar may not lightly disregard these public obligations. Nor, in default of duty, may they casually permit the public to be led to rely upon the counselling, in matters of law, of persons not subject to the standards and discipline of an attorney as imposed by law for the public protection.

Beach Abstract & Guaranty Co. v. Bar Assn. of Ark., 230 Ark. 494, 500-501, 362 S.W.2d 900, 903-904 (1959).

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> It is obvious therefore that the practice of law is not confined to services by a licensed attorney in a court of justice, but also includes any services of a legal nature rendered outside of courts and unrelated to matters pending in the courts. In Re *Duncan*, 83 *S. C.* 186, 65 S. E. 210, the Supreme Court of South Carolina said: "It is too obvious for discussion that the practice of law is not limited to the conduct of cases in court. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to 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. An attorney at law is one who engages in any of these branches of the practice of law".
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> It seems to us that since the greater part of a lawyer's work is performed in his office, it is certainly most important that such office work be performed by persons trained in the law and subject to court discipline. The hazards to the public are reduced to a minimum in court proceedings "where the proceedings are public and the presiding officer is generally a man of judgment and experience. * * * Not so, in the office. Here the client is with his attorney alone, without the impartial supervision of the judge. Ignorance and stupidity may here create damage which the courts of the land cannot undo", *People* v. *Alfani* (1919), 227

N. Y. 334, 125 N. E. 671.

The Supreme Court of Illinois in the case of *People* v. *Peoples Stockyards State Bank* (1931), 344 Ill. 462, 176 N. E., 901, expressed a similar view in this language: "It is just as essential to the administration of justice and the proper protection of society that unlicensed individuals should not be permitted to prey upon the public in that sphere (office practice) of the practice of law as it is with respect to proceedings in the courts. It is no less an usurpation of the functions and privileges of an attorney and an affront to the court having sole power to license attorneys, for one not licensed as such to perform the services of an attorney outside of court procedures".

The Supreme Court of Washington in the case of *Washington State Bar Association* v. *Washington Association of Realtors* (Wash. 1953) 41 Wash. 2d 697, 251 P. 2d 619, used this language: "* * * Any legal form must be adapted skillfully to the transaction for which it is used, so that it expresses the agreement of the parties and defines their rights and obligations. Doing this is work of a legal nature and, when it is done by one unqualified, we not only cannot condone its continuance, but we must act to prevent it, whether or not it is done for compensation", and in the case of *People* v. *Schafer* (1949), 404 Ill. 45, 87 N. E. 2d 773, the Supreme Court of Illinois said: "With reference to preparing deeds, notes, mortgages and contracts in real estate transactions, respondent seems to consider those acts as being more or less mechanical and routine, requiring no legal knowledge or skill. Many titles are complex and complicated. They have grown more so from time to time and will not likely become less complex in the future. Those who prepare instruments which affect titles to real estate have many points to consider. A transaction which at first seems simple may upon investigation be found to be quite involved. One who merely fills in certain blanks when other pertinent information should be elicited and considered is rendering little service, but is acting in a manner calculated to produce trouble. When filling in blanks as directed, he may not by that simple act be practicing law, but if he elicits the proper information and considers it, and advises and acts thereon, he would in all probability be practicing law. In other words, if his service does not amount to the practice of law, it is without material value; but if it is of material value, it would likely amount to the practice of law. The public should be protected from falling into the hands of one not skilled in the laws of conveyancing when seeking advice or service having to do with real estate titles".

Ark. Bar Assn. v. Block, 230 Ark. 430, 436-438, 323 S.W.2d 912, 915-916 (1959).

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In *Union National Bank*, the Arkansas Bar Association sought to enjoin a bank from engaging in the unauthorized practice of law. That opinion addressed the authority of the bank, as fiduciary, to prepare and present petitions and precedents for orders in the probate and chancery courts without representation

by an attorney. *Id*. at 49, 273 S.W.2d at 409. In our opinion, this court made five broad conclusions regarding the practice of law in Arkansas:

o Corporations are prohibited from practicing law in this state and a corporate employee, officer, or director who is not a licensed attorney cannot hold himself or herself out as being entitled to practice law. *Id*. at 51, 273 S.W.2d at 410.

o An individual can practice law for himself or herself, but a corporation can only represent itself in connection with its own business or affairs in the courts of this state through a licensed attorney. *Id*.

o A trustee or personal representative does not act on his or her own behalf and a person who is not a licensed attorney and who is acting as an administrator, executor, or guardian cannot practice law in matters relating to his trusteeship. *Id*. at
51-52, 273 S.W.2d at 410.

o When one appears before a court of record for the purpose of transacting business with the court in connection with any pending litigation or when any person seeks to invoke the processes of the court in any matter pending before it, that person is engaging in the practice of law. *Id*. at 53, 273 S.W.2d at 411.

o The practice of law is regulated by the judiciary. *Id*.

Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, at *6 - *7, 388 S.W.3d 444, 447-448.

Decisions Regarding Regulation of the Practice of Law:

The Role of the Arkansas Supreme Court

Amendment No. 28 to our Constitution reads: "The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys." … As a correlation to the above pronouncement it follows that in this state the judiciary would also have the right to say what constitutes the practice of law. In many jurisdictions, as in this state, the judiciary has on occasions apparently given

> approval to certain enactments by the legislative body, but these enactments are considered to be in aid of the judicial prerogative to regulate the practice of law and not to be in derogation thereof.

Ark. Bar Assoc. v. Union Nat'l Bank, 224 Ark. 48, 54, 273 S.W.2d 408, 412 (1954).

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> The approach taken by this court in the *Union National Bank* case has since been utilized. *See McKenzie, supra*. We have recognized that "[s]tatutes which provide a penalty for unauthorized practice of law by a nonresident of the forum state have been held to be cumulative to the powers of the courts to punish." *McKenzie*, 255 Ark. at 342, 500 S.W.2d at 365. Statutes relating to the practice of law are merely in aid of, but do not supersede or detract from the power of the judicial department to define, regulate, and control the practice of law. *See id*. The legislative branch may not, in any way, hinder, interfere with, restrict, or frustrate the powers of the court. *See id*. Moreover, we have "chosen to recognize and apply certain statutes which are not necessarily inconsistent with, or repugnant to, court rules, and do not hinder, interfere with, frustrate, pre-empt or usurp judicial powers, at least when the statutes were, at the time of enactment, clearly within the province of the legislative branch, and when the courts have not acted in the particular matter covered by the statute." *Id*. at 343, 500 S.W.2d at 365. While there is no question that we hold the power to define, regulate, and control the practice of law, section 16-22-211 reflects the consensus of this court as found in prior case law and implied by our court rules. We have observed [***10] that "[c]orporations shall not practice law." *Union National Bank*, 224 Ark. at 53, 273 S.W.2d at 411 (1954) (quoting *People ex rel. Committee on Grievances of Colorado Bar Ass'n v. Denver Clearing House Banks*, 99 Colo. 50, 54, 59 P.2d 468, 470 (1936)). Additionally, Rule 1.7 of the Arkansas Rules of Professional Conduct sets forth the general principle that an attorney may not represent a client if the representation involves a concurrent conflict of interest. Upon consideration of public policy and recognizing the inability of any person to faithfully serve two masters, we hold that the statute, which prohibits corporations, including insurance companies, from practicing law on behalf of a third party, is constitutional.

Brown v. Kelton, 2011 Ark. 93, at *6 - *7, 380 S.W.3d 361, 365-366.

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> Stoops undertook legal representation of the Prestons when Stoops was not authorized to practice law in Arkansas. Thus, the unauthorized practice of law is at issue. The unauthorized practice of law falls within this court's constitutional authority to control and govern the practice of law. *See, e.g., Am. Abstract & Title Co. v. Rice*, 358 Ark. 1, 186 S.W.3d 705 (2004). The suggestion that the practice of law can be regulated by an Act of the General Assembly is without merit.

> Oversight and control of the practice of law is under the exclusive authority of the judiciary. Under Ark. Const. amend. 28, "The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law." That responsibility could not be discharged if it were dependent upon or controlled by statutes enacted by the General Assembly. See In re Supreme Court License Fees, 251 Ark. 800, 483 S.W.2d 174 (1972). Further, any action by the General Assembly to control the practice of law would be a violation of the separation-of-powers doctrine. *See* Ark. Const. art. 4, §§ 1 & 2. We affirm the circuit court's finding that the [Arkansas Deceptive Trade Practice Act] does not apply to the practice of law.

Preston v. Stoops, 373 Ark. 591, 593-594, 285 S.W.3d 606, 609 (2008).

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> This court has the exclusive authority to regulate the practice of law. *Preston v. Stoops*, 373 Ark. 591, 594, 285 S.W.3d 606, 609 (2008) ("Oversight and control of the practice of law is under the exclusive authority of the judiciary."); *see also* Ark. Const. amend. 28 ("The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law."). Likewise, the unauthorized practice of law falls within this court's constitutional authority to control and govern the practice of law. *Preston*, 373 Ark. at 594, 285 S.W.3d at 609. Because the issue is whether representation of a corporation by a nonlawyer during arbitration proceedings constitutes the unauthorized practice of law, the issue falls squarely within the ambit of this court's constitutional powers and may not be decided by an arbitration body.

Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, at *5 - *6, 388 S.W.3d 444, 447.

> Our standard of review on issues addressing the unauthorized practice of law is a de novo standard. *Nisha, LLC v. TriBuilt Constr. Grp., LLC*, 2012 Ark. 130, at 5, 388 S.W.3d 444, 447.

Desoto Gathering Co., LLC v. Hill, 2017 Ark. 326, 531 S.W.3d 396.

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The Role of the Committee on the Unauthorized Practice of Law

> American contends that the sole body before whom such issues can be raised is the Committee. American bases its argument on Ark. Const. amend. 28, enacted by the people on November 8, 1938. Amendment 28 provides that "[t]he Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law."

On December 18, 1978, this court issued a *per curiam* opinion whereby it established the Supreme Court Committee on the Unauthorized Practice of Law. *See Rule of Court Creating a Committee on the Unauthorized Practice of Law*, 264 Ark. Appx. 960 (1978) (*per curiam*). In that opinion, this court stated the following: The Constitution and laws of this state vest in the Supreme Court the duty and authority to regulate the practice of law and to prohibit the unauthorized practice of law. Pursuant thereto, the following rule is adopted to become effective as of February 1, 1979, and shall apply to all complaints of and matters or inquiries dealing with the unauthorized practice of law. Under this order, the Rules of the CUPL provide that "[a]ll inquiries and complaints relating to the unauthorized practice of law shall be directed to the Committee, in writing, through the Administrative Office of the Courts." *See* Rule IIIa of the Rules of Court Creating a Committee on the Unauthorized Practice of Law (hereinafter "Rules"). American contends that this language gives CUPL exclusive jurisdiction to consider any and all matters pertaining to the unauthorized practice of law. The Rices respond that they never asked the trial court to declare that American was engaging in the unauthorized practice of law; instead, their complaint alleged that American's conduct was false and constituted deceptive trade practices in violation of Ark. Code Ann. § 4-88-101, *et seq*. (Repl. 2001), the Arkansas Deceptive Trade Practices Act.

We do not agree with American that the CUPL has exclusive jurisdiction over matters such as this one. The rules of this court creating the CUPL make it plain that, while the Committee is vested with the authority to investigate claims relating to the unauthorized practice of law, nevertheless, the CUPL itself has no power to *enforce* whatever decision it may reach regarding any given investigation. For example, Rule III provides that "[a]ll inquiries and complaints relating to the unauthorized practice of law shall be directed to the Committee, in writing, through the Administrative Office of the Courts." When the CUPL receives such an inquiry or complaint, it *may* make a determination that the action or course of conduct does or does not constitute unauthorized practice of law. *See* Rule IIIa (emphasis added). Moreover, Rule IIIc provides that, in the event the CUPL issues an *advisory opinion* in which it makes a finding that someone has engaged in the unauthorized practice of law, it "*may* bring an action or actions in the proper court[s] seeking to enjoin that conduct deemed to constitute unauthorized practice of law[.]" (Emphasis added.) The Appendix to these Rules further clarifies that any remedial action the CUPL might take is purely discretionary, rather than mandatory. The Appendix to Rule 7 notes that, under Rule IIIc, the Committee "*may* seek injunctive relief in the appropriate court[s] if issuance of the advisory opinion does not result in cessation of those acts or course of conduct the Committee has pronounced to be the unauthorized practice of law." (Emphasis added.) Plainly, the CUPL is without either the authority or the ability to take any affirmative action on its own -- other than issuing a nonbinding advisory opinion -- to see to it that a party ceases engaging in the unauthorized practice of law. Without this ability to enforce its own rules, the Committee clearly cannot be vested with *exclusive* jurisdiction to consider

> allegations that a person or entity has engaged in the unauthorized practice of law. In other words, CUPL does not have the authority to enforce its opinions without filing a complaint in circuit court, where it can obtain a declaration finding a person is unlawfully practicing law and an injunction to force that person to stop the unauthorized practice. The CUPL, at most, shares jurisdiction in these matters; most certainly, the Committee does not have *exclusive* authority in these matters.
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> We further point out that, over the years, this court has decided numerous cases involving the unauthorized practice of law, without mentioning the CUPL or deciding whether the trial court that heard the case was without jurisdiction to have done so. In *Lenders Title Co.v. Chandler*, 353 Ark. 339, 107 S.W.3d 157 (2003), this court determined that the trial court's class certification order was insufficient, and remanded the matter to the circuit court. Certainly, if the circuit court did not have jurisdiction to consider the same issues in *Lenders*, this court would have remanded the case to the CUPL, but instead, we sent it back to the trial court. Likewise, in *Knight v. Day*, 343 Ark. 402, 36 S.W.3d 300 (2001), this court held that an accountant did not commit constructive fraud by engaging in the unauthorized practice of law, affirming the trial court's ruling to that effect without ever mentioning that the trial court did not have jurisdiction to make that determination in the first place. Rather, the court simply noted, at the conclusion of the opinion, that because "the circumstances of this case involve allegations of the unauthorized practice of law, we hereby direct the Clerk to forward a copy of this opinion" to the CUPL. *Knight*, 343 Ark. at 408. Similarly, in *Smith v. National Cashflow Systems, Inc*., 309 Ark. 101, 827 S.W.2d 146 (1992), this court reviewed and affirmed a determination by the trial court that the actions of appellee National Cashflow Systems did not constitute the unauthorized practice of law, without considering or declaring that the trial court had no jurisdiction to make such a determination. If the CUPL had exclusive subject-matter jurisdiction to consider whether the parties in these cases were engaging in the unauthorized practice of law, this court would have at least mentioned it, since subject-matter jurisdiction is an issue that can be raised *sua sponte*. *See e.g*., *Skelton v. City of Atkins*, 317 Ark. 28, 875 S.W.2d 504 (1994); *Head v. Caddo Hills School District*, 277 Ark. 482, 644 S.W.2d 246 (1982); *Bratcher v. Bratcher*, 36 Ark. App. 206, 821 S.W.2d 481 (1991) (subject-matter jurisdiction is always open, cannot be waived, and can be raised by this court *sua sponte*). Therefore, we reject American's argument that the trial court did not have jurisdiction to consider the Rices' claims regarding American's alleged unauthorized practice of law.

American Abstract & Title Co., 358 Ark. 1, 5-8, 186 S.W.3d 705, 707-709 (2004).

Decisions Involving Out of State Lawyers:

General Rule

A pleading filed by a lawyer not licensed to practice law in Arkansas is a nullity. *Posey v. St. Bernard's Healthcare, Inc.*, 365 Ark. 154, 226 S.W.3d 757 (2006); *B.A.R. Enterprises, Inc. v. Palin Manuf. Co., Inc.*, 312 Ark. 500, 850 S.W.2d 322 (1993).

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Rule 5.5 of the Arkansas Rules of Professional Conduct

Rule 5.5. Unauthorized practice of law, multijurisdictional practice of law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a

jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

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Pro Bono Exception

In *In re Petition Filed by Arkansas Access to Justice Commission to Permit Non-Admitted Attorneys to Provide Pro Bono Services*, 2011 Ark. 139, the Arkansas Supreme Court adopted Administrative Order Number 15 to allow attorneys who are not licensed by the State of Arkansas to provide pro bono services in the state under the auspices of a sponsoring entity approved as a legal aid service provider.

Decisions Involving Non-Lawyers:

Individuals

General Rule

An individual may appear *pro se* to represent himself, but he cannot appear on behalf of others or a corporate entity. *Davidson Properties, LLC v. Summers*, 368 Ark. 283, 244 S.W.3d 674 (2006) ("While Appellant Glenn Davidson, appearing pro se, is certainly entitled to represent himself,

his attempted appearance on behalf of other family members and Davidson Properties, LLC, constitutes the unauthorized practice of law. *See Abel v. Kowalski*, 323 Ark. 201, 913 S.W.2d 788 (1996). … [W]e dismiss the attempted appeal on behalf of other family members and Davidson Properties, LLC, on grounds of the unauthorized practice of law." 368 Ark. at 285-286, 244 S.W.3d at 675-676).

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This general rule extends to appeals of administrative matters, such as the Workers' Compensation Commission, to a court of law, even if an individual could appear on behalf of another individual in the administrative proceeding. *Bouland v. Erwin Keith, Inc.*, 2013 Ark. App. 460 ("[B]y filing a motion in the Arkansas Court of Appeals, Long has engaged in the unauthorized practice of law, in violation of Ark. Code Ann. § 16-22-206 (Repl. 1999). The authority of Long, a non-attorney, to represent Bouland before the Commission under section 11-9-704 does not extend to courts of record. [Citations omitted.] … Therefore, the clerk is ordered to lodge the record showing Bouland appearing pro se. Bouland may appear pro se or hire an attorney to represent him in this appeal.")

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Pro Se Individual Cannot Represent Another Pro Se Individual in Same Action

An individual appearing *pro se* may not represent other individuals in the same action. *Brodbent v. Smith*, 2014 Ark. App. 598, at *3 ("We also note that Al Brodbent, acting pro se, filed a notice of appeal, on behalf of his wife. Al Brodbent can represent himself, but because he is not an attorney he cannot represent himself. [Citation omitted.] Where a party not licensed to practice law attempts to represent others by submitting himself to the jurisdiction of a court, those actions, such as the filings of pleadings, are rendered a nullity.")

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Pro Se Individual Who Is Not a Party Cannot Represent Another Pro Se Individual

Power of Attorney

Answer to complaint signed by mother on behalf of her son under an alleged power of attorney was invalid. *White v. Clay*, 2013 Ark. App. 166, at *2, *5-6 ("Clay prepared a pro se handwritten answer to the complaint while in prison and delivered the handwritten answer to his mother, Gloria Clay, so that she could convert it to a typewritten document. … In the signature block of the filed pro se answer, the answer was signed '*Alvin D. Clay, by Gloria Clay, Power of Attorney*' over the signature line, which read, 'Alvin D. Clay, Pro Se.' … [W]e hold that because Mr. Clay's answer was not signed by him or a person authorized to practice law in Arkansas, it was invalid. Mr. Clay's mother was not authorized to sign the answer on his behalf, and there is nothing in the record to show that she held a valid power of attorney.")

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Family in Need of Services (FINS) Cases

Father of minor found to be habitually disobedient could not represent his daughter on appeal. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005) ("We must agree with the State that because Mr. Bass is not a licensed attorney, this appeal is a nullity. According to Ark. Code Ann. § 16-22-206 (Repl. 1999), no one can engage in the practice of law in this state unless admitted to practice by the Arkansas Supreme Court. Therefore, it is illegal for Mr. Bass to attempt to represent his daughter in this appeal." 93 Ark. App. at 413, 219 S.W.3d at 698)

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Executors of Probate Estates

Although involving a bank and not an individual, the Arkansas Supreme Court stated as follows about a non-lawyer acting as an executor, administrator or guardian:

> *Three. A Trustee or Personal Representative Does Not Act for Himself.* It is our conclusion, after reviewing many decisions of other jurisdictions and from a study of our own statutes, that an individual or a corporation such as the appellee h ere is not looking after its own business when, acting as an administrator, an executor, guardian or in a similar fiduciary capacity, it undertakes to use the processes of the courts of this state in administering and settling the affairs of its *cestui que trust.* Stated specifically we hold that a person who is not a licensed attorney and who is acting as an administrator, executor or guardian cannot practice law in matters relating to his trusteeship on the theory that he is practicing for himself.

Ark. Bar Assoc. v. Union Nat'l Bank, 224 Ark. 48, 51-52, 273 S.W.2d 408, 410 (1954).

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A widower, who was not appointed executor of his wife's estate until after he filed a wrongful death action lacked standing to bring the action and the original complaint was a nullity. *McKibben v. Mullis*, 79 Ark. App. 382, 90 S.W.3d 442 (2002).

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Guardians

In *In re Pro Se Filings In Estates and Guardianships in the Washington County Circuit Court*, 2015 Ark. 419, the Arkansas Supreme Court invalidated an order by five judges to return, unfiled, any pleadings or motions submitted in guardianship and estate matters by persons other than attorneys duly licensed to practice law in the State of Arkansas. The order invited persons

wishing to address the issue of pro se filings in estate and guardianship cases to propose a change to existing court rules.

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Trustees

Trustee, who is not a licensed attorney, cannot appear on behalf of another individual. *Martin v. Blankenship*, 2010 Ark. App. 579, at *4 ("The notice of appeal is signed by Jean Martin over a signature line that states, 'Jean Martin, trustee for Victoria Anderson.' … Thus, pursuant to *Davidson Properties*, this court is bound to conclude that Martin's notice of appeal is a nullity; therefore, the appeal is dismissed.")

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Realtors, Abstracters, Title Insurers & Other Professionals

Realtors

> As indicated, we hold that the preparation of any of the instruments here involved, or any other instruments involving real property rights for others, either with or without pay, save and except instrument No. 14 above [Offers & Acceptances], constitutes the practice of law in this state. Obviously instruments of "Offers and Acceptances" contemplate the subsequent preparations of a deed to the property involved, and possible related instruments such as mortgages, leases, easements, *etc.*, to complete the transaction which, we hold, only a licensed lawyer equipped with requisite legal training, knowledge and skill could prepare.

Ark. Bar Assn. v. Block, 230 Ark. 430, 436-438, 323 S.W.2d 912, 915-916 (1959).

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> It is generally conceded that an individual who is not a licensed attorney can appear in the courts and engage in what is commonly conceded to be practicing law provided he does so for himself and in connection with his own business." Many activities fall within the ambit of the practice of law, for instance, a merchant collecting his own bills is not practicing law while a lawyer performing the same service for the merchant would be practicing law. The relief here sought by appellant Sewell, the realtor, falls within the ambit of the merchant for the filling in of the simple standarized forms here involved is a necessary incident of his business just as the collection of the merchant's bills is a necessary incident of his business. Therefore we are ruling that the decision in *Ark. Bar Assn.* v. *Block,* 230 Ark. 430, 323 S. W. 2d 912, should be modified to provide that a real estate broker, when the person for whom he is acting has declined to employ a lawyer to

> prepare the necessary instruments and has authorized the real estate broker to do so, may be permitted to fill in the blanks in simple printed standardized real estate forms, which forms must be approved by a lawyer; it being understood that these forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker's business and that such forms shall be used only in connection with real estate transactions actually handled by such brokers as a broker and then without charge for the simple service of filling in the blanks.

Creekmore v. Izard, 236 Ark. 558, 565, 367 S.W.2d 419, 423-424 (1963).

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> We are reluctant to say that the preparation of these instruments should not be classified as the practice of law. Standing alone, they fall readily within the meaning of that term. The difficulty is that they are not being considered in the abstract, but in the light and limitation of the six specific conditions carefully imposed by the chancellor in reliance on the decision of *Creekmore* v. *Izard*, *supra*. Even when examined in the context of these restrictions we regard the use and preparation of these instruments as so indigenous to the practice of law that it would be illogical to say they are not. But we can also say, as a majority of other jurisdictions have done, that it is in the public interest to permit the limited, utside use of standard, printed forms in the manner stipulated by the chancellor and we so hold.

Pope County Bar Assn., Inc. v. Suggs, 274 Ark. 250, 256, 624 S.W.2d 828, 830-831 (1981).

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> By petitions for rehearing both sides have asked us to clarify our opinion of November 9, 1981. They contend that the chancellor's decision, which we affirmed without modification, is inconsistent because it authorizes brokers to prepare mortgages, release deeds, bills of sale and leases (as well as standard deeds) but limits the use of those instruments to simple real estate transactions which involve a direct, present conveyance of title in fee simple absolute between the parties. They point out that confusion exists in that some of the approved instruments (mortgages, bills of sale, release deeds and lease agreements) by their very nature do not effectuate a transfer of title in fee simple absolute. They ask specifically if brokers are authorized to fill in the blanks of the standard, printed forms which the chancellor approved when the transaction only involves a mortgage, release deed, bill of sale or lease. The answer is that if the mortgage, bill of sale, release deed or lease is necessary and co-incidental to a real estate transaction (as the chancellor defined it), being handled by the broker in his capacity as a broker, then he is authorized to use the forms under the conditions imposed. If it is not, then his use of the forms would not be permitted and would constitute the unauthorized practice of law. The purpose of *Creekmore* v. *Izard*, 236 Ark. 558, 367 S.W. 2d 419 (1963), which the chancellor followed and which

> we affirmed, was to permit a broker to use these standard forms where it was necessary and reasonable in conjunction with real estate practices and it was *not* the intent of our decision in this case to exceed the limits set in *Creekmore*. There is no valid reason why a real estate broker would need to prepare any of the standard forms disconnected from other real estate transactions as defined by the chancellor and if he were to do so it would seem quite plainly to constitute the practice of law.

Pope County Bar Assn., Inc. v. Suggs, 274 Ark. 250, 257A – 257B, 624 S.W.2d 828, 831-832 (1981) (Supplemental Opinion on Denial of Rehearing).

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Notaries

> Appellant Creekmore, the notary public, does not stand in the same shoes as the broker. His preparation for a fee of deeds, mortgages, bills of sale, etc., clearly constitutes the practice of law for there is no connection between his business and that of preparing such instruments. The learned trial judge was correct in confining him in his capacity as a notary public to the taking of acknowledgments.

Creekmore v. Izard, 236 Ark. 558, 565, 367 S.W.2d 419, 423-424 (1963).

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Abstractors

> The questions presented here relative to the conduct of an abstract business are substantially the same as the questions presented in the case of *Arkansas Bar Association, et al* v. *Sam Block, et al*, 230 Ark. 430, 323 S. W. 2d 912, which is being handed down today. Due to the holding in that case we deem it unnecessary to discuss in this opinion the same subject matter that is covered so adequately in that case except to add that the same provisions that apply to the real estate companies also apply to abstract companies. We are unable to see why the rules governing abstracting activities should not also govern appellants' activities relative to escrow agreements.

Beach Abstract & Guaranty Co. v. Bar Assn. of Ark., 230 Ark. 494, 499, 362 S.W.2d 900, 902 (1959).

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Title Insurers

> Therefore, we conclude that title examination and curative work, when done for another, constitutes the practice of law in its strictest sense and has long been considered as such.

Beach Abstract & Guaranty Co. v. Bar Assn. of Ark., 230 Ark. 494, 500, 362 S.W.2d 900, 903 (1959).

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Corporations

General Rule

A corporation must be represented by a licensed attorney. The filings made by a party not licensed to practice law in this state attempts to represent the interests of others, they filings are a nullity. *Smithco Investments of West Memphis, Inc. v. Morgan Keegan & Co., Inc.*, 370 Ark. 477, 261 S.W.3d 454 (2007).

Application of the Rule

> DeSoto challenged the county court's findings in circuit court, and the circuit court dismissed DeSoto's appeal. The crux of the issue before the court is whether it is error for a circuit court to dismiss a corporation's appeal for lack of jurisdiction when the corporate representative, a nonlawyer, initiated the appeal on behalf of the corporation. We answer in the negative and hold that dismissal under the circumstances in this case was not error for the reasons that follow.
>
> We begin our analysis with amendment 28 to the Arkansas Constitution, which was enacted by the people on November 8, 1938, and provides that "[t]he Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law." We have consistently interpreted this to mean that this court "has the exclusive authority to regulate the practice of law. *Preston v. Stoops*, 373 Ark. 591, 594, 285 S.W.3d 606, 609 (2008) ('Oversight and control of the practice of law is under the exclusive authority of the judiciary.'); *see also* Ark. Const. amend. 28 ('The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.'). Likewise, the unauthorized practice of law falls within this court's constitutional authority to control and govern the practice of law. *Preston*, 373 Ark. at 594, 285 S.W.3d at 609." *Nisha*, 2012 Ark. 130, at 5, 388 S.W.3d at 447. Further, in *Nisha*, we explained our long-standing holdings with regard to the unauthorized practice of law cases:

> In *[Arkansas Bar Association v.] Union National Bank*, [224 Ark. 48, 273 S.W.2d 408 (1954)], the Arkansas Bar Association sought to enjoin a bank from engaging in the unauthorized practice of law. . . . *Id.* at 49, 273 S.W.2d at 409. In our opinion, this court made . . . broad conclusions regarding the practice [***6] of law in Arkansas:
>
> • Corporations are prohibited from practicing law in this state and a corporate employee, officer, or director who is not a licensed attorney cannot hold himself or herself out as being entitled to practice law. *Id.* at 51, 273 S.W.2d at 410.
>
> • An individual can practice law for himself or herself, but a corporation can only represent itself in connection with its own business or affairs in the courts of this state through a licensed attorney. *Id.*
>
> . . . .
>
> • When one appears before a court of record for the purpose of transacting business with the court in connection with any pending litigation or when any person seeks to invoke the processes of the court in any matter pending before it, that person is engaging in the practice of law. *Id.* at 53, 273 S.W.2d at 411.
>
> • The practice of law is regulated by the judiciary. *Id.*

Id. at 6, 388 S.W.3d at 447-48.

Also, with regard to corporations, we have explained that "while there is no question that we hold the power to define, regulate, and control the practice of law, section 16-22-211 reflects the consensus of this court as found in prior case law and implied by our court rules. We have observed that '[c]orporations shall not practice law.' *Union Nat'l Bank*, 224 Ark. at 53, 273 S.W.2d at 411 (1954) (quoting *People ex rel. Comm. on Grievances of Colorado Bar Ass'n v. Denver Clearing House Banks*, 99 Colo. 50, 59 P.2d 468, 470 (1936))." *Brown v. Kelton*, 2011 Ark. 93, at 6-7, 380 S.W.3d 361, 365-66. We have explained that "the prohibition against the unauthorized practice of law exists not only to insure professional competence, but also to protect the public from relying upon the legal counsel of persons who are not bound by the professional standards of conduct that are imposed upon those practicing law in this state. *Undem v. State Board of Law Examiners*, 266 Ark. 683, 587 S.W.2d 563 (1979)." *Clarendon Am. Ins. Co. v. Hickok*, 370 Ark. 41, 46, 257 S.W.3d 43, 46-47 (2007).

With regard to actions that constitute the **unauthorized practice of law**, in *Union National Bank of Little Rock, supra*, this court defined what constitutes the practice of law:

> We do hold however that when one appears before a court of record for the purpose of transacting business with the court in connection with any pending litigation or when any person seeks to invoke the processes of the court in any matter pending before it, that person is engaging in the practice of law. To us this conclusion is obvious. Courts are constituted for the purpose of interpreting and administrating the laws passed by the law making body and the rules announced by the judiciary, and they must necessarily be governed in their operation by rules of procedure. Attorneys are officers of the court and are able by special training and practice to know the law and rules of procedure, and are thereby in position to render a service to the court. Therefore any one who assumes the role of assisting the court in its process or invokes the use of its mechanism is considered to be engaged in the practice of law.

Union Nat'l Bank, 224 Ark. at 53, 273 S.W.2d at 411. We have also held that a person was attempting to practice law when a person who was not a lawyer filed a notice of appeal on another person's behalf. *See Shoemate v. State*, 339 Ark. 403, 5 S.W.3d 446 (1999).

In addition to our case law, our statutes reflect the same prohibition and specifically prohibit corporations from practicing law on behalf of another person or entity, and a corporation is generally prohibited from acting pro se. *See* Ark. Code Ann. § 16-22-211. Ark. Code Ann. section 16-22-211 (a) provides "It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney at law for any person in any court in this state or before any judicial body[.]"

Finally, we must address our law regarding county court. Arkansas Code Annotated § 14-14-1001(a), "County Court Generally," provides: "Courts of Record. The county court shall be a court of record and shall keep just and faithful records of its proceedings." Additionally, under Ark. Code Ann. § 16-10-104, states that "the Supreme Court, Court of Appeals, and all circuit and county courts shall be courts of record and shall keep just and faithful records of their proceedings."

With these standards in mind, we turn to DeSoto's issue on appeal: whether the circuit court erred in dismissing DeSoto's appeal for lack of jurisdiction because the appeal was initiated by a nonlawyer. First, we address the issue of the unauthorized practice of law. DeSoto asserts that the unauthorized practice of law did not occur because company representatives are authorized to initiate the administrative county-court appeal process which DeSoto contends is administrative in nature. Relying on Ark. Code Ann. § 26-27-318(a)(1)(A), DeSoto asserts that the statute specifically allows property owners, here a corporation, to appeal and does not require an attorney. Subsection (a)(1)(A) provides:

> The county assessor or a property owner who is aggrieved at the action of the county equalization board may appeal from the action of the county equalization board to the county court by filing a petition of appeal with the county clerk, who shall assign a case number to the appeal.

However, we disagree with DeSoto's position. ***HN8*** Despite Ark. Code Ann. § 26-27-318 (a)(1)(A) and a property owner's right to appeal an assessment, corporations are prohibited from acting pro se or representing themselves in legal actions. As discussed above, Ark. Code Ann. section 16-22-211(a) does not allow any corporation:

> [T]o practice or appear as an attorney at law for any person in any court in this state or before any judicial body, to make it a business to practice as an attorney at law for any person in any of the courts, to hold itself out to the public as being entitled to practice law, to tender or furnish legal services or advice, to furnish attorneys or counsel, to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume or advertise the title of lawyer or attorney, attorney at law, or equivalent terms in any language in such a manner as to convey the impression that it is entitled to practice law or to furnish legal advice, service, or counsel or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney at law or not, it has, owns, conducts, or maintains a law office or any office for the practice of law or for furnishing legal advice, services, or counsel.

Here, DeSoto, through a nonlawyer, lodged its appeal in the Faulkner County Court, initiating the appeal process in a court of record. Arkansas Code Annotated sections 14-14-1001 and 16-10-104 provide that the county court shall be a court of record. "We have repeatedly held that when a person not licensed to practice law in this state attempts to represent the interests of another by submitting himself or herself to the jurisdiction of a court, the pleadings filed by that person are rendered a nullity." *See Preston v. Univ. Ark. Med . Scis.*, 354 Ark. 666, 128 S.W.3d 430 (2003); *Davenport v. Lee*, 348 Ark. 148, 72 S.W.3d 85 (2002); *see also McKenzie v. Burris*, 255 Ark. 330, 500 S.W.2d 357 (1973). Here, DeSoto clearly invoked the legal process and its nonattorney representative engaged in the unauthorized practice of law.

Next, DeSoto argues that a determination of whether its filings constitute the unauthorized-practice-of-law is of no moment, because even if the filings were unauthorized, the circuit court erred in dismissing the appeal where Hill did not timely object to the unauthorized practice. However, this argument is without merit because we have consistently held that subject matter jurisdiction may be raised at any time and that we can address the issue of the appellate court's subject matter jurisdiction over an appeal sua sponte. *Clarendon Am. Ins. Co.*, 370 Ark. at 44, 257 S.W.3d at 45. "Subject-matter jurisdiction is an issue that can be raised

sua sponte. *See e.g., Skelton v. City of Atkins*, 317 Ark. 28, 875 S.W.2d 504 (1994); *Head v. Caddo Hills School District*, 277 Ark. 482, 644 S.W.2d 246 (1982); *Bratcher v. Bratcher*, 36 Ark. App. 206, 821 S.W.2d 481 (1991) (subject-matter jurisdiction is always open, cannot be waived, and can be raised by this court sua sponte)." *Am. Abstract & Title Co. v. Rice*, 358 Ark. 1, 8, 186 S.W.3d 705, 709 (2004).

Next, having addressed DeSoto's unauthorized-practice-of-law and timeliness claims, we move to the effect of the unauthorized practice of law. In *Davenport*, 348 Ark. 148, 72 S.W.3d 85, we held that the complaint was a nullity based on the absence of counsel. The appellants in *Davenport* contended that the complaint was only defective and not void ab initio. *Id.* We rejected appellants' argument, holding that where a party commits the unauthorized practice of law, any actions by that party, such as the filing of pleadings, are rendered a nullity. *Id.* Thus, because the original complaint in that case was a nullity, the amended complaint could not relate back, and the circuit court properly dismissed the suit due to the expiration of the statute of limitations. *Id.* Since *Davenport*, we have continued to consistently hold that pleadings filed on behalf of another by a person not licensed to practice law in this state are a nullity. In *Preston*, 354 Ark. 666, 128 S.W.3d 430, we affirmed the circuit court's dismissal of a complaint that had been filed by a nonresident attorney, stating that the complaint was void, of no effect, and a nullity. Also, in *Clarendon America Ins. Co., supra*, we held that the notices of appeal filed by a nonresident attorney were a nullity and that because the deadline for filing an appeal had lapsed, the appeal must be dismissed. *See also Smithco Invs. of W. Memphis, Inc. v. Morgan Keegan & Co.*, Inc., 370 Ark. 477, 261 S.W.3d 454 (2007) (per curiam) (dismissing appeal where notice of appeal was a nullity because it had been filed by appellant's CEO, who was not an attorney). Further, although the appellant in *Clarendon* had also argued that the appellees had waived any objection to the representation by not raising the issue in the proceedings below, we held that it was an issue of subject-matter jurisdiction that we could raise sua sponte. *Id.*

Accordingly, here, based on our discussion above, the notices of appeal that Murray filed on behalf of DeSoto must be deemed a nullity because they were filed in violation of the prohibition of the unauthorized practice of law. Because the notices of appeal are a nullity and the deadline for filing an appeal under Ark.Code Ann. § 26-27-318 had lapsed when the amended notices were filed, the petitions of appeal were a nullity, the county court did not have jurisdiction, and the circuit court did not have jurisdiction. Further, as discussed above, subject-matter jurisdiction may be raised at any time and therefore DeSoto's challenge to timeliness is without merit. Therefore, based on our standard of review, we find that the circuit court did not err in granting Hill's motion to dismiss, and we affirm the circuit court.

However, despite this holding, DeSoto urges this court to adopt a prospective application of the holding in this case. DeSoto asserts that because we are

adopting a "new rule," the holding applies prospectively. We disagree. Desoto cites the court of appeals' opinion in *Stephens* that was announced on October 28, 2015, and urges this court to overrule *Stephens*. Hill cites *Stephens* and argues that the court should rely on the opinion. However, the court of appeals' opinion in *Stephens* is not helpful to our discussion in this case. First, "it is well settled that the Arkansas Court of Appeals must follow the precedent set by the Arkansas Supreme Court." *Homecare Pharmacy, Inc. v. Douglas*, No. CA 00-196, 2000 Ark. App. LEXIS 711, 2000 WL 1683438, at *3 (Ark. Ct. App. Nov. 8, 2000). The court of appeals "must follow the precedent set by the supreme court and are powerless to overrule its decisions. *Rice v. Ragsdale*, 104 Ark. App. 364, 292 S.W.3d 856 (2009); *Breckenridge v. Ashley*, 55 Ark. App. 242, 934 S.W.2d 536 (1996)." *Watkins v. Ark. Elder Outreach of Little Rock, Inc.*, 2012 Ark. App. 301, at 8, 420 S.W.3d 477, 483. Therefore, the *Stephens* opinion has no precedential value in this case. Second, asserting that *Stephens* or a holding in this case should only be applied prospectively is, at best, weak. Our holding today, as in *Stephens*, simply interprets our existing laws and does not announce a new rule. Here, from the discussion above, it is clear that none of the statutes were "new" laws and none of the case law is "new." Simply put, we have interpreted statutes and applied holdings from our case law that were part of our law when DeSoto filed its petitions of appeal in circuit court. Therefore, we decline DeSoto's invitation to declare that our holding today has only prospective application. We also note that in August 2017, the General Assembly expressly added the following language to Ark. Code Ann. Section 26-27-317:

> (e)(1) The county equalization board shall decide the merits of an adjustment of assessment application and notify the property owner of its decision in writing at least ten (10) business days after the hearing.
>
> 2) The county equalization board's notification shall include:
>
> . . . .
>
> (D) A statement that a petition filed in county court for a hearing on behalf of a corporation, limited liability company, or other business entity shall be signed and filed by an attorney licensed to practice law in Arkansas.

Accordingly, prospectively, it is clear what the law requires.

Finally, as we have explained in previous opinions, "while we too disfavor dismissing actions on technical grounds, this court must remain cognizant of our duty to protect the interests of the public through the regulation of the practice of law. The power to regulate and define the practice of law is a prerogative of the judicial department as one of the divisions of government. *See Wilson v. Neal*, 341 Ark. 282, 16 S.W.3d 228 (2000), *cert. denied*, 532 U.S. 919, 121 S. Ct. 1355, 149 L. Ed. 2d 285 (2001); *Weems v. Supreme Ct. Comm. on Prof. Conduct*, 257 Ark. 685a, 257 Ark. 673, 523 S.W.2d 900, *reh'g denied*, 257 Ark. 673, 523

S.W.2d 900 (1975). Amendment 28 to the Arkansas Constitution specifically details our duty in this regard and states: 'The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.' This court accepted the responsibility assigned to it by the constitution and set the standards high in order to protect the public, as well as the integrity of the legal profession. *Wilson*, 341 Ark. 282, 16 S.W.3d 228. In light of our duty to ensure that parties are represented by people knowledgeable and trained in the law, we cannot say that the unauthorized practice of law simply results in an amendable defect. Where a party not licensed to practice law in this state attempts to represent the interests of others by submitting himself or herself to jurisdiction of a court, those actions such as the filing of pleadings, are rendered a nullity." *Davenport*, 348 Ark. at 160, 72 S.W.3d at 93-94. Accordingly, we affirm the circuit court.

Desoto Gathering Co., LLC v. Hill, 2017 Ark. 326, 4-13, 531 S.W.3d 396, 399-404

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Ark. Code Ann. § 16-22-211

16-22-211. Corporations or associations -- Practice of law or solicitation prohibited -- Exceptions -- Penalty.

(a) It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney at law for any person in any court in this state or before any judicial body, to make it a business to practice as an attorney at law for any person in any of the courts, to hold itself out to the public as being entitled to practice law, to tender or furnish legal services or advice, to furnish attorneys or counsel, to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume or advertise the title of lawyer or attorney, attorney at law, or equivalent terms in any language in such a manner as to convey the impression that it is entitled to practice law or to furnish legal advice, service, or counsel or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney at law or not, it has, owns, conducts, or maintains a law office or any office for the practice of law or for furnishing legal advice, services, or counsel.

(b) It also shall be unlawful for any corporation or voluntary association to solicit itself by or through its officers, agents, or employees any claim or demand for the purpose of bringing an action thereon or of representing as attorney at law or for furnishing legal advice, services, or counsel to a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or

is about to be brought, or who may be affected by any action or proceeding that has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy.

(c) The fact that any officer, trustee, director, agent, or employee shall be a duly and regularly admitted attorney at law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited in this section, nor shall that fact be a defense upon the trial of any of the persons mentioned for a violation of the provisions of this section.

(d) This section shall not apply to a:

(1) For-profit corporation or voluntary association lawfully engaged in:

(A) The examination and insuring of titles to real property; or

(B) Employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may become a party; or

(2) Nonprofit corporation or voluntary association lawfully engaged in representing or assisting an indigent, poor, or disadvantaged person as a client in a civil or criminal matter, provided that any legal services rendered by a nonprofit corporation or voluntary association are furnished through duly licensed attorneys in accordance with rules governing the practice of law in Arkansas.

(e) (1) Nothing contained in this section shall be construed to prevent a corporation from furnishing to any person lawfully engaged in the practice of law such information or such clerical services in and about his or her professional work as may be lawful, except for the provisions of this section, if at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his or her clients for the information and services so received.

(2) However, no corporation shall be permitted to render any services that cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.

(f) (1) Any corporation or voluntary association violating any of the provisions of this section shall be guilty of a violation and punished by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000).

(2) Every officer, trustee, director, agent, or employee of the corporation or voluntary association who directly or indirectly engages in any of the acts prohibited in this section or assists such a corporation or voluntary association to do such prohibited acts shall be guilty of a violation and shall be punished by a

fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000).

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Insurance company may not assign one of its in-house lawyers to represent an insured. *Brown v. Kelton*, 2011 Ark. 93, at *5, 380 S.W.3d 361, 365. ("In the instant case, it is undisputed that FIE is not a party and will not become a party to the underlying lawsuit. Therefore, it was prohibited by Ark. Code Ann. § 16-22-211 from assigning appellant Brown, one of its in-house counsel, to defend the insureds in the litigation.")

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Banks as Executors

See Ark. Bar Assoc. v. Union Nat'l Bank, 224 Ark. 48, 56-57, 273 S.W.2d 408, 413 (1954):

The decree from which this appeal comes permanently restrains appellee from:

"1. The drafting, re-drafting or modification of wills or other testamentary instruments."

"2. The preparing of motions, pleadings or other instruments to be filed in court and the appearing in court on behalf of any beneficiary of a fiduciary estate any co-trustee, co-executor, co-administrator or other person other than the defendant itself, either in its individual or in some fiduciary capacity."

"3. The advising of any persons as to matters of law other than the defendant itself, either in its individual or in some fiduciary capacity."

We are in accord with this portion of the decree and it is therefore affirmed.
The decree refused to restrain appellee from probating ". . . a will when it has been named executor therein, the preparation of notices, *inventories, accounts*, motions, precedent for orders, and all other pleadings and instruments which are required to be filed in probate court or chancery court, or which become necessary or advisable in the administration of an estate or trust, whether the defendant be acting as executor, administrator, guardian for an incompetent, or otherwise in a trust relationship." We are not in agreement with this portion of the decree and it is hereby reversed, except as it applies to "inventories" and "accounts," which words we emphasized above. Appellee, of course, has a right to use its books and facilities to compile data necessary to the drafting of said instruments and to actually prepare and draft the same. It is the presentation of said instruments in court and the invocation of the court's processes thereon and not the preparation thereof that constitutes the unauthorized practice of law.

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Appeals in Matters Before Agencies Where Non-Lawyers Can Appear for Corporation

Arkansas Board of Review Appeals

A non-lawyer's appeal on behalf of a corporation from a decision of the Arkansas Board of Review to a court is the unauthorized practice of law even though the proceeding before the Board of Review did not require a lawyer to appear on behalf of the corporation. *Nucor Steel v. Director*, 2016 Ark. App. 377, at *2 ("Here, Crain is not an attorney and may not represent Nucor in this case. [Citation omitted.] Our case law makes it clear that invoking the process of a court of law constitutes the practice of law. *Stephens Prod. Co. v. Bennett*, 2015 Ark. App. 617. Because Crain was practicing law when she signed the petition, the petition is null and void. *Id.*"). *See also Value Stream Commercial Services, LLC v. Director*, 2016 Ark. App. 460.

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County Tax Assessment Appeals

Stephens Prod. Co. v. Bennett, 2015 Ark. App. 617, at *4 ("Zeller, the signer of the petitions for appeal, is not authorized to practice law in Arkansas. Additionally, a corporation may not practice law. Individuals may represent themselves, but corporations may do so only through a licensed attorney attorney. … Our case law makes it clear that invoking the process of a court of law constitutes the practice of law. Because Zeller was practicing law when he signed the petitions, those petitions were null and void.")

See also Desoto Gathering Co., LLC v. Hill, 2017 Ark. 326, 4-13, 531 S.W.3d 396, 399-404 quoted above at pages 16-22.

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Workers Compensation Commission Appeals

A non-lawyer's signing of an appeal from the Workers' Compensation Commission is the unauthorized practice of law and a nullity. *Global Mills, Inc. v. Granger*, 2010 Ark. App. 463, at *2 ("Regardless of whether Mr. Anderson had the ability to properly appear before the [Workers' Compensation] Commission because the Commission is an administrative forum and not a court, it was not proper for him to attempt to represent a corporate appellant, in effect pro se, in the prosecution of this appeal. … Accordingly, the notice of appeal that Mr. Anderson filed on behalf of appellant must be deemed a nullity.")

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An out-of-state lawyer not licensed to practice law in Arkansas must be admitted pro hac vice or he is engaged in the unauthorized practice of law:

> Regardless of whether the Workers' Compensation Commission is considered to be a "court of record" or whether Wallace was authorized to appear before the Commission, Wallace engaged in the unauthorized practice of law when he filed the notices of appeal. By the act of filing the notices of appeal, Wallace sought judicial review of the Commission's decision and thereby attempted to "invoke the use of the appellate court mechanism" in Arkansas. The next question for us to consider is whether Wallace was authorized to practice law in this state.
>
> The prohibition against the unauthorized practice of law exists not only to insure professional competence, but also to protect the public from relying upon the legal counsel of persons who are not bound by the professional standards of conduct that are imposed upon those practicing law in this state. *Undem v. State Board of Law Examiners*, 266 Ark. 683, 587 S.W.2d 563 (1979). We have held that it is mandatory for a nonresident attorney to file a motion *pro hac vice*, in compliance with Rule XIV, in order to obtain authority to practice in the courts of Arkansas. *See Fisher v. State*, 364 Ark. 216, 364 Ark. 216, 217 S.W.3d 117 (2005).

Clarendon America Ins. Co. v. Hickok, 370 Ark. 41, 46, 257 S.W.3d 43, 46-47 (2007).

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Arbitrations

> Though this court has never decided whether legal representation in an arbitration proceeding constitutes the practice of law in Arkansas, we have noted, as already referenced, that arbitration is designed to be a "less expensive and more expeditious means of settling litigation," and to relieve "docket congestion." *Cash in a Flash Check Advance of Arkansas, L.L.C.*, 348 Ark. at 466, 74 S.W.3d at 604. We have also said that "[a]rbitration hearings are not analogous to trial proceedings." *Hart*, 344 Ark. at 666, 42 S.W.3d at 559. Those statements, though, do not decide the issue.
>
> In reaching a decision on this matter, we are influenced by the fact that this court has been resolute in strictly enforcing the rule that a corporation through its nonlawyer officers cannot engage in the practice of law. *See* Ark. Code Ann. § 16-22-211(a); *see also All City Glass & Mirror, Inc. v. McGraw Hill Info. Sys. Co., Div. of McGraw Hill, Inc.*, 295 Ark. 520, 521, 750 S.W.2d 395, 396 (1988) (finding that a judge was acting within his powers by striking the answer of the president of a corporation when the president was not authorized to practice law); *Davidson Props., LLC v. Summers*, 368 Ark. 283,

> 285, 244 S.W.3d 674, 675 (2006) (noting that a nonlawyer's attempt to represent an LLC on appeal constituted the unauthorized practice of law). We are further influenced by the fact that arbitration proceedings bear significant indicia of legal proceedings under the Uniform Arbitration Act, which has been adopted by this state. As already noted, if a hearing is held during arbitration, the parties have the right to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing. Ark. Code Ann. § 16-108-205(3).
>
> Bearing in mind the role of an advocate in arbitration proceedings, as just described, we are hard pressed to say that services of a legal nature are not being provided on behalf of the party in arbitration; in this case, TriBuilt. *See Undem*, 266 Ark. 683, 587 S.W.2d 563. Accordingly, we reverse the decision of the circuit court on this point and hold that a nonlawyer's representation of a corporation in arbitration proceedings constitutes the unauthorized practice of law.

Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, at *12 - *13, 388 S.W.3d 444, 451.