

The Facts on When an LLC or Corporation Needs A Lawyer In PA Courts

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Articles, e-mails and rumors have been swirling lately over changes in PA law on when an LLC or a corporation needs to hire a lawyer to go to court. Much of that information is incomplete, or worse. In this short article, I hope to clearly explain what has and has not changed in Pennsylvania for entities.

For many years, lawyer I have advised PA real estate investors and others to use LLCs, corporations and other entities to separate their personal assets from liabilities which flow from their businesses. My advice in that regard has not changed. If you run a business which employs others, or own investment real estate to flip or hold, you should not be in business as a sole proprietor under your own social security number and name, or in a General Partnership, in which each partner is jointly and severally liable as an individual for all liabilities of the business. A land trust, which some real estate mentors recommend, does not provide much more protection, especially for the trustee from his or her own actions.

LLCs, corporations and limited partnerships with entities as their general partners provide greater protection, since the law considers those entities to be separate legal persons from the individuals who own them. Those entities still work exactly as intended in most situations you will face in your business. I use them for my own businesses, and would not think of doing business without their protections.

When a business, LLC, corporation or limited partnership sues a tenant for eviction or sues another party for money in Magisterial District Court, Pa. R.C.P.M.D.J. 207(A)(3), (a court rule) specifically allows corporations, LLCs and other entities and associations to be represented in that court by an officer, employee or authorized agent without an attorney. That has not changed. That rule still applies in magisterial district courts and you can still represent your entity in that court.

Allegheny County has long had a similar local rule, Local Rule of Civil Procedure 200, which specifically allowed corporations, partnerships and other associations to be represented in that court by officers or partners in appeals from MDJ judgments involving evictions and claims for money only in amounts less than the jurisdictional limit of magisterial district courts (\$12,000). That rule has been abrogated by a recent case which I will discuss next.

That case is a clear ruling from the PA Superior Court in David R. Nicholson, Builder, LLC vs Jablonski, filed May 19th, 2017, and published at 163 A.3d 1048, which prevents the owner of an LLC, even a single member LLC, from representing the entity "Pro Se" without a lawyer in the Courts of Common Pleas in Pennsylvania. Nicholson started simply enough in the Magisterial District Court in Union County, Pa. Nicholson was the sole member of his LLC, in which he conducted a contracting business. He sued customers of his business for failing to pay under a contract, handled the case in front of the magisterial district judge without a lawyer, and lost. Nicholson then filed an appeal pro se in the Court of Common Pleas in the name of his LLC, and filed a complaint in that court.

The customers hired an attorney who filed preliminary objections to Nicholson's complaint, arguing that Nicholson could not file pro se in that court on behalf of his LLC, and could not represent the LLC in the court action because he was not an attorney. Nicholson then hired an attorney who filed a complaint on behalf of the LLC. The customers' attorney then filed the same preliminary objections to that complaint, and added an objection that the second complaint was too late. The judge in the Court of Common Pleas agreed with the customers' lawyer, struck the appeal and dismissed the complaint.

Nicholson's attorney then appealed to the Superior Court, which carefully considered the above protections to owners offered by an LLC from liability for its actions. Because of that protection, the court reasoned that an LLC is a separate legal person from its owner/members. Therefore, the court held that the owners would be representing another person, not themselves, in Common Pleas Court, and could not do that without being a licensed attorney. The Superior Court then found the appeal by Nicholson was a legal nullity, did not toll the time for an appeal, and that the later complaint by an attorney on behalf of the LLC was too late.

That decision was not reversed by the Pa Supreme Court, and is now the law throughout Pennsylvania. The case was not immediately widely discussed in other courts, but Neighborhood Legal Services lawyers throughout Pa have now been using the Nicholson case to object to representation of LLCs by their members, and I just participated teaching a training program for arbitrators in Allegheny County in which the Nicholson decision was distributed to over 70 arbitrators and a major point of discussion. I expect that most arbitrators in Allegheny County and throughout Pa will now be applying Nicholson, and throwing LLC owners who come to court on behalf of their LLCs without lawyers out of court, with no chance to hire a lawyer thereafter to keep the case alive.

So, you can always represent yourself in any court, you can represent your general partnership in Pa courts most of the time, but you can only represent your LLC or corporation without a lawyer in Magisterial District Court, for civil matters for money damages and evictions. If those cases get appealed to Common Pleas Court or beyond, your corporation or LLC must hire a lawyer, or face having your pleadings stricken and not being given the opportunity to hire a lawyer later.