

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL**

**STATE OF WYOMING**

**A PETITION TO THE ENVIORNMENTAL )  
QUALITY COUNCIL FOR DESIGNATION )  
OF AN AREA KNOWN AS SAND CREEK )  
AS RARE OR UNCOMMON )**

**Docket No. 09-1102**

**FILED**  
**JUL 08 2009**  
Jim Ruby, Executive Secretary  
Environmental Quality Council

**REPLY TO RESPONSE OF  
ERIK MOLVAR RE PRACTICING LAW  
WITHOUT A LICENSE**

COMES NOW, John Green, General Partner of Mineral Hill, L.P., which are surface and mineral owners of property located in the Sand Creek area and replies to Erik Molvar's email response claiming that he is not practicing law without a license as follows:

Mr. Molvar fails to respond as to whether he is licensed to practice law in Wyoming. Instead, he replies and alleges that layperson representation of the corporate petitioner, Biodiversity Conservation Alliance, and others before the Wyoming Environmental Quality Council does not constitute "practicing law without a license" as the proceedings are administrative and not legal proceedings. However, the Supreme Court of Wyoming, Rule 11 defines the practice of law as follows:

*"(a) "Practice of law" means advising others and taking action for them in matters connected with law. It includes preparation of legal instruments and acting or proceeding for another before judges, courts, tribunals, commissioners, boards or other governmental agencies." (Emphasis added.)*

Clearly, the Supreme Court of Wyoming does not allow layperson representation in matters connected with law and does not exempt government boards or agencies.

This issue was previously specifically addressed by the sister bar of Montana, Ethics Opinion 000008, after a hearing examiner conducting administrative hearings pursuant to the Montana Administrative Procedure Act, which is similar to the Wyoming Administrative Procedure Act, observed that "recently a number of corporations made appearances, testified and made final arguments through individuals not permitted to practice law." His question was "...

whether, as an attorney, I may ethically allow a corporation to represent itself pro se through an unlicensed individual before such a tribunal." The Montana opinion broke the question down in to three (3) separate questions:

1. Does the making of appearances, testifying and making final arguments before an administrative agency constitute the practice of law? Opinion conclusion: Yes.
2. If such activity does constitute the practice of law does the pro se exception operate to permit representatives of corporations not admitted to practice to appear before such administrative agencies? Opinion conclusion: No.
3. Assuming such activity constitutes the practice of law and does not fall within the pro se exception, may an administrative law judge (an attorney) ethically allow a corporation to represent itself pro se through an unlicensed individual before such a tribunal? Opinion conclusion: No.

Without repeating the full opinion, the opinion confirms that such activities constitute the practice of law and concludes that an administrative law judge may not ethically permit a corporation to represent itself pro se through an unlicensed individual, as such action violates the disciplinary rule which provides that "A lawyer shall not aid a non-lawyer in the unauthorized practice of law." The Montana Bar committee concluded that an administrative law judge (an attorney) "aids" in the unauthorized practice of law when he knowingly permit a non-lawyer to represent others before the agency. Permitting such activity would violate Canon 3: "A Lawyer Should Assist in Preventing Unauthorized Practice of Law." The committee concludes with the directive that "all administrative law judges cease from permitting such unauthorized practice and to report any instances of such to the appropriate authorities." A similar holding no doubt applies with regard to unlicensed practice before administrative agencies in Wyoming.

A party is obligated to object at the agency level to the administrative tribunal's procedure so that the tribunal will have an opportunity to correct its errors. State ex rel. Wyoming Worker's Safety and Compensation Division v. Wright, 983 P.2d 1227, 1231 (Wyo. 1999). If a party has an opportunity to object to the administrative tribunal's procedural rulings and fails to do so, it waives its right to challenge the administrative tribunal's procedure on appeal. *Id.* The procedures outlined in the Wyoming Administrative Procedure Act are designed to provide parties in administrative proceedings with due process. Roush v. Pari-Mutuel Commission of State of Wyoming, 917 P.2d 1133, 1143 (Wyo. 1996). Parties to administrative proceedings are entitled to due process of law. Pfeil v. Amax Coal West, Inc., 908 P.2d 956, 961 (Wyo. 1995); Amoco Production Company v. Wyoming State Board of Equalization, 882 P.2d 866, 872 (Wyo. 1994). "Procedural due process principles require reasonable notice and a meaningful opportunity to be heard before government action may substantially affect a significant property interest." Pfeil, 908 P.2d at 961; see also Whiteman v. Wyoming Workers'

Safety and Compensation Division, Department of Employment, 984 P.2d 1079, 1083 (Wyo. 1999).

There is also abundant legal authority that a corporation cannot be represented by a person who is not a lawyer. See Aviation Maint. Pub. v. Capital Corp., 740 P.2d 940 (Wyo. 1987)(Layman not entitled to represent corporation regardless of his association with it); Stanrett v. Shepard, 606 P.2d 1247 (Wyo. 1980) (a person who is not an attorney cannot represent a corporation in court regardless of his association with or interest in the corporation); United States v. 191 Acres of Land et al., 416 F.2d 1244 (6th Cir. 1969) (corporate president); Jones v. Niagara Frontier Trans. Authority, 722 F.2d 20 (2d Cir. 1983) (corporate officer); Walacavage v. Excell 2000, 331 Pa. Super 137, 480 A.2d 281 (1984) (same); Shamey v. Hickey, 433 A.2d 1111 (D.C. App. 1981) (sole shareholder); Quinn v. Housing Authority of Orlando, 385 So. 2d 1167 (Fla. Dist. Ct. App. 1980) (employee). See also Merco Construction Engineers, Inc. v. The Municipal Court for the Long Beach Judicial District of Los Angeles County, 21 Cal. 3d 724, 147 Cal. Rptr. 631, 581 P.2d 636 (1978) (it is unconstitutional for legislature to authorize a corporation to appear in civil action through a corporate officer not licensed as attorney).

Mr. Molvar's claim that he is not practicing law without a license is ludicrous and absurd the same as his claim that licensing as an attorney for corporate representation is not required because it is not specifically provided for in the Very Rare and Uncommon provisions themselves. For Mr. Molvar to claim that objecting to his practicing law without a license is frivolous with no case citation or authority presented, whatsoever, to support his position, is evidence in and of itself of his lack of legal training and ignorance of the law.

WHEREFORE, it is respectfully requested that the proceedings be stayed until such time as Mr. Molvar presents evidence of his authority to practice law as previously requested. Alternatively, the Council could dismiss the petition, on the grounds that he has not denied that he is practicing law without a license, subject to it being properly re-filed by an attorney if deemed appropriate in the opinion of the attorney after a review of the facts, past proceedings and applicable law.

Dated: July 8, 2009

Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that I have this 8<sup>th</sup> day of July, 2009, mailed the above and foregoing Reply to Response of Erik Molvar Re Practicing Law Without a License to the Wyoming Environmental Quality Council, Herschler Bldg., Room 1714, 122 W. 25<sup>th</sup> St., Cheyenne, Wyoming 82002 and faxed it to them at 307-777-6134. I have also mailed a copy to the Attorney General's Office, Administrative Division, 123 Capital Building, 200 W. 24<sup>th</sup> St., Cheyenne, WY 82002.



John Green