

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC, 2006-1506

December 15, 2017

or via email at pubcom@finra.org

RE: Regulatory Notice 17-34, October 18, 2017

Dear Ms. Asquith,

1. The following comments are those of the Business and Securities Law Section Council, Illinois State Bar Association, responding to the above Regulatory Notice. The notice, in general, requested commentary on the efficacy of allowing compensated non-attorneys to represent parties in arbitration.

2. The staff commentary in the Regulatory Notice noted that non-attorney firms are currently permitted to represent investors in complaints against broker-dealers, and that one of the complaints received by FINRA is that such NAR firms have so represented investors “in hearing locations where state law prohibits such representation.” The Section Council notes that such representation is illegal in Illinois, under three authorities:

a. The Attorney Act, 705 ILCS 205/1, which specifies that:

“No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State. No person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney, nor may an unlicensed person advertise or hold himself or herself out to provide legal services.”

b. The Corporation Practice of Law Act, 705 ILCS 220/1, which specifies that:

“It shall be unlawful for a corporation to practice law or appear as an attorney at law for any reason in any court in this state or before any judicial body, or to make it a business to practice as an attorney at law for any person in any said courts or to hold itself out to the public as being entitled to practice law or to render or furnish legal services or advice or to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner to assume to be entitled to practice law, or to assume, use and advertise the title of lawyers or attorney, attorney at law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, furnish attorneys 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 an office for the practice of law or for furnishing legal advice, services or counsel.”

c. The Rules of the Illinois Supreme Court, Rule 701 ff., outline requirements for education, passage of a state bar examination, and personal character and fitness that must be met for admission to the practice of law. The Rules further provide that the Illinois Attorney Registration and Disciplinary Commission may seek sanctions for unauthorized practice, see Illinois Supreme Court Rule 752(a).

d. Our supreme court has defined the practice of law as “ ‘the giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill.’ ” *People ex rel. Chicago Bar Ass'n v. Barasch*, 406 Ill. 253, 256, 94 N.E.2d 148 (1950) (quoting *People ex rel. Illinois State Bar Ass'n v. Schafer*, 404 Ill. 45, 50, 87 N.E.2d 773 (1949)).”

3. The Section Council notes that FINRA arbitration decisions may need to be implemented with the assistance of civil court judgments. FINRA should note that it has been held that a judgment obtained by persons unauthorized to practice law is void, cf. *Downtown Disposal Serv. Inc. v. the City of Chicago*, 943 N.E.2d 185, 407 Ill.App.3d 822, 347 Ill.Dec. 895 (Ill. App., 2011). That court noted that application of the nullity rule is automatic, id. at 943 N.E.2d 194-95, “Accordingly, it is well settled that the ‘effect of a person's unauthorized practice on behalf of a party is to require dismissal of the cause or to treat the particular actions taken by the representative as a nullity.’ ” (Emphasis added.) Sperry, 214 Ill.2d at 390, 292 Ill.Dec. 893, 827 N.E.2d 422 (quoting *Pratt–Holdampf v. Trinity Medical Center*, 338 Ill.App.3d 1079 1083, 273 Ill.Dec. 708, 789 N.E.2d 882 (3d Dist.2003)).”

4. The court was clear as to the reason for this nullity rule: “The purpose of the nullity rule is to protect litigants from the mistakes of ignorant individuals and the schemes of the unscrupulous, as well as to protect the court in its proceedings from individuals who lack the requisite skills. Janiczek, 134 Ill.App.3d at 546, 89 Ill.Dec. 673 481 N.E.2d 25” (Id., (347 Ill.Dec. 905 , 943 N.E.2d 195.)

5. The Section Council notes that these concerns and reasons for prohibition of unauthorized law practice apply to FINRA arbitrations involving Illinois residents, wherever held. Current FINRA regulations permitting such practice, and any amendment to same authorizing easier corporate practice by firms not subject to state ethics, law practice education, and other rules that bind attorneys are and will remain unenforceable in Illinois, and should be drafted to prohibit such practice elsewhere. Securities laws are complex, and their proper enforcement (and defenses to enforcement actions) require considerable legal skill and knowledge.

Pursuant to Illinois State Bar Association policy, this letter has been reviewed and approved by ISBA President the Hon. Russell W. Hartigan (ret.).

Respectfully Submitted,

/s/ Brian Johnson

Brian Johnson, Chair
Section Council
Section of Business and Securities Law
Illinois State Bar Association

/s/ William Price

William Price, Member
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