STATE OF IDAHO)
County of KOOTENAI)ss
FILED 6/24/19
AT 1:45 O'Clock P. M
CLERK, DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

AMY CLEMMONS, as Guardian for ETHEL LUCK,,

Plaintiff,

VS.

SARAH ROHEL,

Defendant.

Case No. **CV28-19-1782**

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO STRIKE AND MOTION TO DISMISS PURSUANT TO SPECIAL APPEARANCE

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter comes before the Court on Defendant Sarah Rohel's (Rohel) Motion to Strike and Motion to Dismiss as against Plaintiff Amy Clemmons (Clemmons), on behalf Ethel Luck (Luck). Rohel requests the Court strike the original Complaint in this matter, alleging it is nullity. Rohel further requests the Court dismiss the case, as any amended complaint would not successfully relate back to the filing date of the original Complaint, and would thus be outside the two-year statute of limitations in which to bring suit for personal injury, detailed in Idaho Code (I.C.) § 5-219.

This Court agrees with Rohel. This Court is mindful that the result of this decision is catastrophic for Luck, however, the law mandates this result. On her own and on the last day before the statute of limitations ran for Luck, Clemmons filed a Complaint to begin this matter. The law is clear that only an attorney could have filed such complaint for Clemmons, acting as a representative for Luck.

On March 13, 2017, Luck and Rohel were in an automobile accident at the intersection of East Wallace Avenue and North Second Street in Coeur d'Alene, Idaho. Compl., ¶ 1.4. Clemmons asserts that Rohel "negligently operated a motor vehicle" by failing to stop at a posted stop sign and ultimately struck "the passenger side of the vehicle in which [Luck] was a passenger..." *Id.* at ¶¶ 1.4, 1.5.

On March 13, 2019, exactly two years after the automobile accident, a Complaint was drafted, signed, and filed by Clemmons, on behalf of Luck.[1] The Complaint does not specifically mention I.C. § 5-219, the personal injury statute applicable to this matter. Clemmons and Luck have the following relationship: Clemmons is the daughter of Luck; Clemmons was given power of attorney to act on behalf of Luck as it relates to property management; and Clemmons asserts that she is Luck's general guardian. Compl., ¶ 1.2; Pl.'s Decl. in Supp. of Opp'n of Def.'s Mots., Ex. 3. The original Complaint was signed only by Clemmons, and the area below Clemmons' signature line contains the words "AMY CLEMMONS, Guardian for Ethel Luck, pro se." *Id.* at 3.

On April 16, 2019, Clemmons, *pro se*, filed an Amended Complaint. The substance of the Amended Complaint is essentially the same as the original Complaint, with two notable differences. First, paragraphs 1.1 and 1.2 of the original Complaint state, "Plaintiff is...a resident of Kootenai County, Idaho," and "Plaintiff has Alzheimer's disease...," whereas paragraphs 1.1 and 1.2 of the Amended Complaint state, "Ms. Luck is...a resident of Kootenai County, Idaho," and "Ms. Luck has Alzheimer's disease..." Compl., ¶¶ 1.1, 1.2, Am. Compl., ¶¶ 1.1, 1.2. Second, the Amended Complaint was signed by both Clemmons and Luck. Additionally, the area below

[1] The captions in both the original complaint and the amended complaint state that the plaintiff is "AMY CLEMMONS, as Guardian for ETHEL LUCK." Compl., 1; Am. Compl., 1.

Clemmons' signature contains the words "AMY CLEMMONS, Pursuant to I.R.C.P. 17 acting as Guardian for Ethel Luck, pro se." Am. Compl., 3.

On April 18, 2019, Rohel, appearing specially through counsel, filed a Motion to Strike Complaint Pursuant to Special Appearance pursuant to Idaho Rule of Civil Procedure (I.R.C.P.) 11 and I.C. § 3–104. Mot. to Strike, 1. Rohel identified the specific conduct in violation of I.R.C.P. 11 as being the non-attorney signature of Clemmons on the original Complaint. *Id.* That same day, Rohel also filed a Motion to Dismiss Pursuant to Special Appearance. Lastly, on April 18, 2019, Rohel filed Defendant's Memorandum in Support of Motions.

Clemmons then apparently retained an attorney. On April 23, 2019, a Notice of Appearance was filed by counsel for Clemmons. On May 23, 2019, counsel for Clemmons filed Plaintiff's Memorandum in Response to Defendant's Motion to Strike Complaint and Motion to Dismiss the Case, Plaintiff's Declaration in Support of Opposition to Defendants Motion to Strike Complaint and Motion to Dismiss the Case, and a Proposed Amended Complaint. The substance of the Proposed Amended Complaint is identical to that of the first Amended Complaint, except that the Proposed Amended Complaint is signed only by counsel for Clemmons.

Finally, on May 28, 2019, Rohel, again appearing specially through counsel, filed Reply to Plaintiff's Opposition to Motions. A hearing on Rohel's Motion to Strike and Motion to Dismiss was held on May 30, 2019. The Court heard oral arguments and thereafter took the matter under advisement.

II. STANDARD OF REVIEW

"The interpretation of the Idaho Rules of Civil Procedure is a matter of law." *Black v. Ameritel Inns, Inc.*, 139 Idaho 511, 513, 81 P.3d 416, 418 (2003) (citing *Hutchinson v. State*, 134 Idaho 18, 21, 995 P.2d 363, 366 (Ct.App.1999)). This Court

exercises free review over matters of law. *Id.* (citing *Iron Eagle Dev., L.L.C. v. Quality Design Sys., Inc.*, 138 Idaho 487, 491, 65 P.3d 509, 513 (2003)).

III. ANALYSIS

First, the Court will discuss whether a general guardian can represent an incompetent adult in a pro se capacity. Second, the Court will discuss whether the original Complaint complied with the signature requirement of I.R.C.P. 11(a). Third, the Court will discuss whether the cure provision of I.R.C.P. 11 is applicable to the original Complaint. Lastly, based on the above findings, the Court will discuss whether the Proposed Amended Complaint will relate back to the filing date of the original Complaint, thus tolling the two-year statute of limitations period.

The Court notes that the record is devoid of any documentation showing that Clemmons is Luck's guardian. Additionally, this Court has not appointed Clemmons as Luck's guardian ad litem. Further, while the record does contain what appears to be a letter from Luck's physician stating that Luck has experienced "a significant decline in her cognitive function" over the past year, a formal hearing has neither been requested nor held to determine whether Luck is legally incompetent for purposes of this case. Pl.'s Decl. in Supp. of Opp'n of Def.'s Mots., Ex. 2; *see* I.R.C.P. 17(b). However, because this Court has not found a case law in Idaho that addresses this particular issue, the Court will proceed as though Clemmons is the general guardian of Luck, and that Luck is an incompetent adult. Otherwise, the holding of this Court would be as follows. It is well-established that a non-attorney is prohibited from representing another layperson in a pro se capacity, and to do so would be to engage in the unauthorized practice of law. *See* I.C. § 3-104.[2]

[2] The relevant portion of I.C. § 3-104 reads: "If any person shall practice law or hold himself out as qualified to practice law in this state without having been admitted to practice therein by the Supreme

A. A non-attorney general guardian cannot draft, sign, and file pleadings in a *pro se* capacity on behalf of an incompetent adult.

Rohel asserts that a complaint filed in Idaho must be signed by a real plaintiff in interest personally, here being Luck, or by a licensed Idaho attorney. Def.'s Mem. in Supp. of Mots., 5. Rohel argues that Clemmons engaged in the unauthorized practice of law by drafting, signing, and filing the original Complaint on behalf of Luck. *Id.* In support of her argument that Clemmons' actions were unlawful, Rohel cites to the following cases: *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 215 P.3d 457 (2009), *Weston v. Gritman Memorial Hospital*, 99 Idaho 717, 587 P.2d 1252 (1978), and *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987).

In response, Clemmons argues that I.R.C.P. 17 and I.C. § 5-306 allow a general guardian to initiate a lawsuit on behalf of an incompetent individual, and allow a general guardian to stand "in the shoes of the incompetent individual." Pl.'s Mem. in Resp. to Def.'s Mot. to Strike and Mot. to Dismiss (Pl.'s Mem. in Resp.), 2. Clemmons argues, "[i]ncompetent parties...are precluded from signing due to their lack of capacity, and therefore the action must be brought by and signed by a guardian." *Id.* at 3. In support of her claim that a general guardian is permitted to draft and sign pleadings on behalf of an incompetent adult, Clemmons relies on *Hutton v. Davis*, 56 Idaho 231, 53 P.2d 345 (1935), and *State v. Ritchie*, 114 Idaho 528, 757 P.2d 1247 (Ct. App. 1988).[3] *Id.* at 3-6.

Before the Court discusses of each of the parties' cited cases, the Court will discuss I.R.C.P. 17(a) and (c), I.C. § 5-306, and Clemmons' power of attorney. The

---

Court and without having paid all license fees now or hereafter prescribed by law for the practice of law he is guilty of contempt both in the Supreme Court and district court for the district in which he shall so practice or hold himself out as qualified to practice."

[3] Clemmons also relies on *Berg v. Kendall*, 147 Idaho 571, 212 P.3d 1001 (2009), in support of her position that a general guardian may act in *pro se* capacity by drafting, signing, and filing pleadings on behalf of an incompetent adult. However, because the case currently before the Court does not involve a representative completely failing to prosecute a claim, as was the case in *Berg*, and because no party is

relevant portion of I.R.C.P. 17(a), titled "Real Party in Interest," states that "[a]n action must be prosecuted in the name of the real party in interest." I.R.C.P. 17(a)(1). Applying this rule to the current matter, the lawsuit alleging negligence on behalf of Rohel had to be brought in the name of Luck, because Luck was the one involved in the automobile accident. This subsection of Rule 17 was satisfied, as Clemmons brought suit on behalf of Luck. The rule goes on to state that a guardian "may sue in [his or her] own [name] without joining the person for whose benefit the action is brought." I.R.C.P. 17(a)(1)(D). Applying this rule to the current matter, Luck is the person for whose benefit the action was brought, as Luck was the one involved in the automobile accident and the claim against Rohel would benefit only Luck. Clemmons was permitted to sue in her own name, and on behalf of Luck, and was not required to actually join Luck as a second party to the suit. This subsection of Rule 17 was satisfied, as Clemmons brought suit on behalf of Luck. The Court finds that there are no words or phrases present in I.R.C.P. 17(a) that could be construed to allow a non-attorney guardian to initiate suit on behalf of another without the assistance of a licensed attorney. To hold otherwise would render I.C. § 3-104 meaningless.

Next, the entirety of I.R.C.P. 17(c), titled "Minor or Incompetent Person," reads:

> (1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:
> (A) a general guardian;
> (B) a committee;
> (C) a conservator; or
> (D) a like fiduciary.
> (2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person who is unrepresented in an action.

---

currently seeking to set aside a judgment, as was also the case in *Berg*, the findings of *Berg* have no bearing on this Court's decision.

I.R.C.P. 17. Because Clemmons is the general guardian of Luck for purposes of this matter, subsection (2) need not be applied. Applying subsection (1) to the current matter, Clemmons, the general guardian, is permitted to "sue or defend" on behalf of Luck, the incompetent adult. As argued by Clemmons above, Clemmons is permitted to essentially "stand in the shoes of Luck" and represent her best interest in a court of law. However, though Clemmons is permitted to "sue or defend" on behalf of Luck, she must do with the assistance of a licensed attorney. The Court finds that there are no words or phrases present in I.R.C.P. 17(c) that could be construed to allow a non-attorney guardian to "sue or defend" on behalf of an incompetent adult without the assistance of a licensed attorney. To hold otherwise would, again, render I.C. § 3-104 meaningless. In summary, the Court finds that I.R.C.P. 17 and the subsections therein do not support Clemmons' argument that a general guardian is permitted to draft, sign, and file pleadings on behalf of an incompetent adult.

Next, the relevant portion of I.C. § 5-306 states, "[w]hen an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending in each case." I.C. § 5-306. In *Hutton v. Davis*, the Supreme Court of Idaho stated, "[t]he statute...requires that the ward appear by guardian. This means the guardian must be made a party to the action or proceeding and must appear therein for and on behalf of the ward." 56 Idaho 231, 53 P.2d 345, 346 (1935). Additionally, Black's Law Dictionary defines "appearance" as "a coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person." Black's Law Dictionary, *appearance*, 94 (7th ed. 1999). Therefore, an incompetent adult appearing by his general guardian essentially means that the general guardian appears alongside the attorney on behalf of the incompetent adult. As Clemmons stated above, the general guardian essentially

stands in the shoes of the incompetent adult. In summary, the Court finds that there are no words or phrases present in I.C. § 5-306 that could be construed to allow a general guardian to appear in court on behalf of an incompetent adult either as an attorney, or without the assistance of a licensed attorney.

Briefly, the Court will address the arguments made by each party regarding power of attorney, as the wording contained in Clemmons' power of attorney is very similar to the wording of I.C.R.P. 17(c) and I.C. § 5-306. Rohel asserts that power of attorney does "not authorize a lay person to practice law in a representative capacity." Def.'s Mem. in Supp. of Mots., 3 (citing *Disciplinary Counsel v. Coleman*, 724 N.E.2d 402 (Ohio 2000) (power of attorney cannot circumvent prohibition of unauthorized practice of law); *Christiansen v. Melinda*, 857 P.2d 345 (Alaska 1993) (power of attorney does not entitle an agent to appear *pro se* in his principal's place); *Haynes v. Jackson*, 744 A.2d 1050 (Maine 2000); *Estate of Friedman*, 482 N.Y.S.2d 686 (Sur. Ct., Bronx Cnty. 1984)). Clemmons asserts that she does have the ability to act as an attorney on behalf of Luck based on the power of attorney. Compl., ¶ 1.2; Pl.'s Mem. in Resp., 14–15.

This Court agrees with the widely-established rule that power of attorney does not authorize a layperson to engage in the practice of law on behalf of another. *State v. Bettwieser*, 143 Idaho 582, 149 P.3d 857 (Ct. App. 2006) ("Defendant, by granting her father a power of attorney, did not empower him to exercise her right to self-representation in prosecution for traffic infraction of following too closely"). Again, to hold such would render the statutes addressing the unauthorized practice of law

meaningless. Therefore, the Court finds that Clemmons' power of attorney does not authorize her to engage in the practice of law on behalf of Luck.[4]

In transitioning to the parties' cited case law, the Court will first discuss the case of *Indian Springs LLC v. Indian Springs Land Inv., LLC*, which involves an assignee of mortgagees bringing suit against mortgagors "seeking to foreclose mortgage on property and to collect on promissory note secured by mortgage." 147 Idaho 737, 215 P.3d 457 (2009). The district court granted the assignee's motion for summary judgment, and the mortgagors' attorney withdrew shortly thereafter. *Id.* The mortgagors brought the appeal as *pro se* litigants, acting on behalf of themselves as individuals, as well as "on behalf of the limited liability company, the partnership, and the two trusts" involved in the matter. *Id.* at 743, 215 P.3d at 463. The assignee asserted "that the [mortgagors'] representation of these business entities constitutes the unauthorized practice of law." *Id.* at 744, 215 P.3d at 464.

The Supreme Court of Idaho noted, "Idaho Code § 3–104 sets forth that no person shall practice law in the State of Idaho without first having been admitted to practice by the Idaho Supreme Court." *Id.* The Court also provided, "this Court has previously held that a pro se appellant may not represent a business entity." *Id.* (*see White v. Idaho Forest Indus.*, 98 Idaho 784, 572 P.2d 887 (1977)). Regarding the mortgagors' attempt to represent the limited liability company and the partnership, the Court stated, "the law in Idaho is that a business entity, such as a corporation, limited

---

[4] Clemmons also states, "Idaho law specifically provides that an agent with a Power of Attorney to act within the 'authority granted in the power of attorney.'" Pl.'s Mem. in Resp.,15 (citing I.C. § 15-12-114). The subsection Clemmons is referencing states that an agent that has accepted appointment shall "[a]ct only within the scope of authority granted in the power of attorney." I.C. § 15-12-114(1)(c). The power of attorney gives Clemmons the authority to sue for any claims of liability and to participate in any legal action in Luck's name, similar to I.R.C.P. 17(c) and I.C. § 5-306. Pl.'s Decl. in Supp. of Opp'n to Def.'s Mots., Ex. 3. In sum, the power of attorney granted to Clemmons does not contain any words or phrases that could be construed to allow Clemmons to act as an attorney on behalf of Luck.

liability company, or partnership, must be represented by a licensed attorney before an administrative body or a judicial body." *Id.* at 744–45, 215 P.3d at 464–65. Therefore, the Court held that the mortgagors were prohibited from representing the limited liability company and the partnership in a *pro se* capacity. *Id.* at 745, 215 P.3d at 465. Regarding the mortgagors' attempt to represent the trust, the Court stated:

> Although a non-attorney may appear pro se on his own behalf, that privilege is personal to him. *See C.E. Pope Equity Trust*, 818 F.2d at 697. By representing the trust pro se, the trustee would be representing the interests of others, i.e. the beneficiaries, and would therefore be engaged in the unauthorized practice of law. 76 Am.Jur.2d Trusts § 606 (2005).

Id. at 745, 215 P.3d at 465. The Court noted the lack of evidence in the record relating to the trust, but stated that even if the mortgagors were the trustees of the trust, they were engaged in the unauthorized practice of law by representing the trust in a *pro se* capacity. *Id.*

In *Indian Springs*, the non-attorney acting in a *pro se* capacity was a mortgagor, and the mortgagor attempted to represent business entities. Here, Clemmons is a non-attorney guardian that attempted to represent an incompetent adult in a *pro se* capacity. While the facts of *Indian Springs* are distinguishable from the case currently before the Court, the underlying rule regarding a non-attorney appearing *pro se* is applicable. Applying the holding from *Indian Springs* to the current matter before the Court, a non-attorney general guardian may not appear *pro se* to represent the interests of others. Therefore, Clemmons may not appear *pro se* to represent the interests of Luck. In conclusion, by drafting, signing, and filing the original Complaint on behalf of Luck, Clemmons represented the interests of Luck, and thus engaged in the unauthorized practice of law.

Rohel also cites to *Weston v. Gritman Memorial Hospital*, 99 Idaho 717, 587 P.2d 1252 (1978), in support of her position. While the bulk of the decision discusses an employee who engaged in misconduct that disqualified her from receiving unemployment benefits, the last paragraph of the decision is relevant to the case at hand. In *Weston*, the Court briefly made note of an issue that presented itself:

> This record requires us to take note, as we did in a recent case of an apparent violation of I.C. [§] 3-10[4]. It appears here that one Steven A. Millard, Director of the Idaho Hospital Association, introduced evidence, examined and cross-examined witnesses, interposed objections and in general acted as attorney in the prosecution and defense of this contested claim. We recognize the inherent right of a natural person to represent himself Pro se, but this right does not extend to representation of other persons or corporations.

Id. at 720, 587 P.2d at 1255. While the facts of *Weston* are distinguishable from the case currently before the Court, the underlying rule stating that the right of a person to represent herself *pro se* does not extend to the representation of other *persons* is applicable. In *Weston*, the non-attorney individual who acted as an attorney on behalf of the hospital was the Director of the Idaho Hospital Association. Additionally, the Director's participation in the case against the employee was substantial, as he introduced evidence, examined and cross-examined witnesses, and interposed objections. Here, Clemmons is a non-attorney guardian who attempted to represent an incompetent adult. Unlike the Director in *Weston*, Clemmons' participation in the case was minimal, as she only signed and filed two pleadings before hiring counsel. Clemmons did not appear in front of the Court, did not introduce evidence, examine or cross-examine witnesses, or interpose objections. Nonetheless, because the right of a person to represent herself *pro se* does not extend to the representation of another person, Clemmons was not permitted to sign and file the two pleadings in a *pro se* capacity on behalf of Luck.

In *C.E. Pope Equity Trust v. U.S.*, a federal case decided by the Ninth Circuit Court of Appeals, the trustee signed each Complaint as "Richard L. Stradley, Trustee." 818 F.2d 696, 697 (9th Cir. 1987). "The district court dismissed the Complaint in *C.E. Pope* without prejudice and granted the defendants' motion to strike the complaint in *Shadwick*." *Id.* Because the issue in both cases was the same, they were consolidated for the decision. *Id.* On the issue of the non-attorney trustee signing the Complaint, the Court held:

> Although a non-attorney may appear in propria persona in his own behalf, that privilege is personal to him. *McShane v. United States*, 366 F.2d 286, 288 (9th Cir.1966). He has no authority to appear as an attorney for others than himself. *Russell v. United States*, 308 F.2d 78, 79 (9th Cir.1962); *Collins v. O'Brien*, 208 F.2d 44, 45 (D.C.Cir.1953), cert. denied, 347 U.S. 944, 74 S.Ct. 640, 98 L.Ed. 1092 (1954). In the instant case, the record shows no matter before the district court presented by, or on behalf of, Richard Stradley. Stradley's status as trustee is fiduciary; his statutory responsibility is the orderly administration of assets. *United States v. Cooke*, 228 F.2d 667, 669 (9th Cir.1955). [...]. Because Stradley is not the actual beneficial owner of the claims being asserted by the Trusts (so far as one can tell from the record), he cannot be viewed as a "party" conducting his "own case personally" within the meaning of Section 1654.[5] He may not claim that his status as trustee includes the right to present arguments pro se in federal court.

Id. at 697–98. While the facts of *C.E.Pope* are distinguishable from the case currently before the Court, the underlying rule that the non-attorney appearing *pro se* must be the actual beneficial owner of the claims being asserted in the pleadings is applicable. In *C.E. Pope*, the non-attorney trustee was appearing as an attorney on behalf of a trust, but the trustee was not the actual beneficial owner of the claims being asserted. Therefore, because the trustee was not conducting his own case personally, his actions on behalf of the trust were prohibited. Here, Clemmons was essentially appearing as

---

[5] "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654.

an attorney on behalf of Luck, but Clemmons is not the beneficial owner of the claim being asserted in the Complaint. The Complaint involves only Luck and Rohel; the claim asserted is one of negligence on behalf of Rohel and the damages being sought are beneficial to Luck. Following the holding of the Court in *C.E. Pope*, the ability of Clemmons to appear *pro se* is a privilege personal to her; Clemmons has no authority to appear as an attorney for anyone other than herself. Therefore, by drafting, signing, and filing the original Complaint on behalf of Luck, Clemmons was not conducting her own case personally, but rather was attempting to conduct Luck's case, which constitutes the unauthorized practice of law.

The Court will now discuss the cases cited to by Clemmons in support of her argument that a general guardian, in a *pro se* capacity, has the authority to draft, sign, and file pleadings on behalf of an incompetent individual. In *Hutton v. Davis*, the issue was whether the Supreme Court of Idaho had jurisdiction over the appeal when the notice of appeal was not served on the guardian for the almost three-year-old infant respondent, and the infant was not "being represented [in court] by anyone having authority to represent him." 56 Idaho 231, 53 P.2d 345, 347 (1935). After the district court affirmed the industrial accident board's award to the infant – the grandson of the deceased employee – the employer and insurance fund appealed. *Id.* at 231, 53 P.2d at 345. The Supreme Court of Idaho stated:

> No one has appeared herein as general guardian for [the infant] and no guardian ad litem has been appointed for him. I.C. § 5-306 contains the following:
>
> > "When an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending in each case, or by a judge thereof, or a probate judge."

> The infant respondent, not having appeared by general guardian or by a guardian ad litem, is without legally constituted representation on this appeal.

Id. at 231, 53 P.2d at 345–46. A stipulation was filed with the Court which stated that the natural mother of the infant was previously appointed as "guardian of the estate of the said minor" in a prior matter and thereafter continued to be the guardian for said minor in this matter. *Id.* at 231, 53 P.2d at 346. The stipulation also provided that the infant respondent was being represented by the same attorney that was representing the adult dependents of the deceased employee. *Id.* The Court found that the attempt to give the Court jurisdiction over the infant respondent by way of stipulation was unsuccessful, and stated:

> The requirement contained in I.C.A. § 5-306, that an infant "must appear either by his general guardian or by a guardian ad litem" was not satisfied by the appointment of a general guardian and the employment, by her, of an attorney to represent the ward. The statute does not permit the guardian to send the ward into the action, but requires that the ward appear by guardian. This means the guardian must be made a party to the action or proceeding and must appear therein for and on behalf of the ward.

Id. at 231, 53 P.2d at 346. Therefore, based on the above, the Court was without jurisdiction over the appeal and it was subsequently dismissed. *Id.* 231, 53 P.2d at 347.

Though it's not the main focus of the decision, *Hutton* stands for the notion that, where a general guardian is appearing on behalf of a minor, the minor must also be represented by a licensed attorney. Applying *Hutton* to the facts of the current case before the Court, an incompetent adult must appear by a general guardian and must be represented by a licensed attorney. *Hutton* does not support Clemmons' argument that a non-attorney general guardian can sign and file pleadings on behalf of an incompetent adult.

Next, Clemmons relies heavily on *State v. Ritchie*, 114 Idaho 528, 757 P.2d 1247 (Ct. App. 1988), in support of her assertion that "Idaho courts recognize a right of a minor or incompetent to receive the assistance of a relative or guardian to act *pro se* to protect their interests..." Pl.'s Mem. in Resp., 5. In *Ritchie*, the Court of Appeals of Idaho recognized "the narrow right of a minor to receive the assistance of a parent in appropriate circumstances." 114 Idaho at 529, 757 P.2d at 1248. The facts of *Ritchie* can be summarized as follows. James Ritchie, a minor, was found guilty of two driving-related misdemeanors by a magistrate court, and on appeal, the district court affirmed the magistrate court's ruling. 114 Idaho at 529, 757 P.2d at 1248. One of the issues presented on appeal from the district court was "whether the Sixth Amendment right to counsel entitles an accused to be represented by a lay person of his choice." *Id.* The Court disagreed with Ritchie's assertion that he is entitled to the "assistance of lay counsel" in criminal prosecutions. *Id.* at 530, 757 P.2d at 1249. The Court stated:

> The Idaho Supreme Court has held—consistently with decisions in all other state and federal courts where the question has been addressed—that a criminal defendant has no constitutional right to be represented at trial by lay counsel. *See State v. Brake*, 110 Idaho 300, 715 P.2d 970 (1986).

Id. After a brief discussion of the Sixth Amendment's guarantee of counsel, the Court stated, "[t]he constitutional guarantee is limited by only one exception—the individual's right to choose, albeit unwisely, to represent himself." *Id.* at 531, 757 P.2d at 1250.

However, the Court in *Ritchie* then provided a very narrow exception: a parent may, under certain circumstances, and when specifically permitted by the court, provide assistance to a minor in a criminal matter. The Court explained:

> [A]lthough parental assistance to a minor is not constitutionally protected under the Sixth Amendment right to counsel, neither is it prohibited by *Brake* nor is it barred by any procedural rule or statute. When a minor requests the court to allow lay assistance from a parent or guardian, the

> court should determine—in light of the offense charged and the apparent capabilities of the minor—whether such assistance is likely to aid the defense. If it is, or if the court is uncertain, the request should be granted. If parental assistance clearly will not aid the defense, the request may be denied with a reasoned explanation.

Id. *Ritchie* does not support Clemmons' argument that a non-attorney general guardian is permitted to draft, sign, and file pleadings on behalf of an incompetent individual, and is almost entirely distinguishable from the current matter. First, the *Ritchie* Court makes clear that the lay assistance of a parent is separate and distinct from the assistance of a licensed attorney. Second, the narrow exception in *Ritchie* specifically applies to criminal cases. The *Ritchie* Court does not at any point in the decision indicate that this exception is also applicable to civil cases. Third, the narrow exception allows a *minor* to request lay assistance from a parent or guardian. The *Ritchie* Court does not indicate that the exception could be extended to allow incompetent adults to request lay assistance from a relative or guardian. Fourth, the *Ritchie* Court does not explain what "appropriate circumstances" would be that would warrant a court to allow a minor to have the lay assistance of a parent. Thus, there is no logical way of determining whether those circumstances, or similar circumstances, are present in the current case. In summary, *Ritchie* does not support Clemmons' argument that a non-attorney general guardian is able to provide assistance to an incompetent adult by drafting, signing, and filing pleadings in a *pro se* capacity.

The case of *State v. Bettwieser*, 143 Idaho 582, 149 P.3d 857 (Ct. App. 2006), is also worth discussing. In *Bettweiser*, an adult female was issued a traffic citation. Thereafter, her father "signed and filed several motions and a request for discovery, purporting to act 'for and on behalf of [his adult daughter], acting in a pro-se manner.'" *Id.* at 585, 149 P.3d at 860. The father "also appeared at several hearings on behalf of

the [adult daughter]. *Id.* The adult daughter thereafter filed a motion to dismiss, which included a statement that read, "I have waived my right to have an attorney of law represent me and that I elected to handle the matter pro-se and that I have substituted my pro-se status to my father." *Id.* (internal quotations omitted). At a hearing, the magistrate court "concluded that Martin could not represent [his adult daughter] in the proceedings," and "further ordered that all the pleadings filed by [the father], including the request for discovery, be stricken." *Id.* On appeal, after she had been found guilty of committing the infraction, the adult daughter argued "that the magistrate erred in not permitting [her father] to continue to represent [her] and in striking the discovery request he filed." *Id.*

The focus of *Bettwieser* discusses the difference between an "infraction" and a "claim" in relation to the latter portion of I.C. § 3-104 that allows "any person" to appear as representative of any party to a civil proceeding, but not a misdemeanor proceeding, "so long as the claim does not total more than $300..." *Id.* at 586–87, 149 P.3d at 861–62. However, in the Court's general discussion of I.C. § 3-104, it made the following relevant statement:

> This statute's prohibition against practicing law without a license unquestionably applies to representation of another in court proceedings and the drafting and filing of pleadings for another. *See Idaho State Bar v. Meservy*, 80 Idaho 504, 508, 335 P.2d 62, 64 (1959); *In re Matthews*, 57 Idaho 75, 83, 62 P.2d 578, 581 (1936); *State v. Wees*, 138 Idaho 119, 122, 58 P.3d 103, 106 (Ct.App.2002).

Id. at 586, 149 P.3d at 861. Additionally, in reference to parental representation of a minor, the Court stated that the narrow exception in *State v. Ritchie* is inapplicable to the case before it, as the daughter who sought to be represented by her father was an

adult, as she was over the age of eighteen.[6] *Id.* at 587, 149 P.3d at 862. Because the prohibition against practicing law without a license unquestionably applies to the drafting and filing of pleadings for another, Clemmons was prohibited from drafting, signing, and filing the pleadings on behalf of Luck. By doing so, Clemmons engaged in the unauthorized practice of law.

After considering all of the above case law, the following is clear: a non-attorney mortgagor is prohibited from representing business entities in a *pro se* capacity; a non-attorney hospital director is prohibited from representing a hospital in a *pro se* capacity; a non-attorney trustee is prohibited from representing a trust in a *pro se* capacity; and a non-attorney parent is prohibited from representing a minor in a *pro se* capacity. After considering I.R.C.P. 17 and I.C. § 5-306, together with the cases cited by each party, this Court finds that a non-attorney general guardian is prohibited from representing an incompetent adult in a *pro se* capacity. This Court further finds that a non-attorney general guardian is prohibited from drafting, signing, and filing pleadings on behalf of an incompetent adult in a *pro se* capacity. Therefore, based on those findings, Clemmons engaged in the unauthorized practice of law when she drafted, signed, and filed the original Complaint in a *pro se* capacity on behalf of Luck.

A Third Circuit Court of Appeals case is helpful in explaining the law and the result. In *Pinkney v. City of Jersey City Dep't of Hous. & Econ. Dev.*, 42 F.App'x 535 (3d Cir. 2002), that court held:

> Steven Pinkney, acting solely on behalf of Danielle Pinkney, timely filed this appeal and a *pro se* brief. We have jurisdiction pursuant to 28 U.S.C. § 1291.
>
> At the outset, we must address whether Steven Pinkney was even authorized to represent the plaintiffs, particularly his allegedly incompetent

[6] The *Bettwieser* Court confirmed that the exception in *Ritchie* only applies to a parent and the minor child. In other words, once the child reaches the age of majority, the *Ritchie* exception no longer applies.

adult daughter. The District Court did not expressly address this threshold question of representation before it ruled on the merits of the complaint. Under our holding in *Osei-Afriyie v. Medical College of Pa.,* 937 F.2d 876, 882-83 (3d Cir.1991), a guardian or parent cannot represent an incompetent adult in the courts of this Circuit without retaining a lawyer. As we explained, " 'it is not in the interest of ... incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected.' " *Id.* at 883 (quoting *Cheung v. Youth Orchestra Found. of Buffalo, Inc.,* 906 F.2d 59, 61 (2d Cir.1990)).

There is no evidence in the present record that Danielle Pinkney is, in fact, mentally incompetent, and no evidence of a state court order appointing a guardian.[1] [[1]Steven Pinkney asserts that Danielle has "cerebral palsy," Brief at 29, but the only even arguably relevant documentation in the record seems to be a 1995 letter from a pediatric cardiologist, Dr. Arnold J. Slovis, who in reporting his findings from a cardiac evaluation notes that Danielle "seems to be slightly retarded." App. at 221. This does not constitute sufficient evidence of mental incompetency.] If Danielle is not an incompetent, then she may well have the capacity to sue, in which case Steven Pinkney's attempt to assert claims on her behalf must be rejected. If she is incompetent, and Steven Pinkney is her proper representative, then he can bring suit on Danielle's behalf, *see* Fed.R.Civ.P. 17(c), but under *Osei-Afriyie,* as we have noted, Mr. Pinkney must retain a lawyer rather than seek to appear as non-licensed counsel for Danielle. As courts have explained, "[t]o maintain a suit in a federal court, a child or mental incompetent must be represented by a competent adult, ordinarily a parent or relative.... But though [the competent adult] may bring [ ] suit on the [mental incompetent's] behalf, he may not do so without counsel." *Johnson v. Collins,* 2001 WL 195027, at *5, 5 Fed.Appx. 479 (7th Cir. Feb. 23, 2001) (citing, *inter alia, Collinsgru v. Palmyra Bd. of Educ.,* 161 F.3d 225, 231 (3d Cir.1998)).

Finally, as to whether Steven Pinkney would be a proper representative of Danielle's interests, the District Court should consider whether a power of attorney signed by an allegedly incompetent adult has any validity. Of course, it bears repeating that, even if Danielle is incompetent and Steven Pinkney is a proper representative, he still cannot act as counsel for Danielle.[2] [Similarly, with regard to the claims asserted on behalf of plaintiff Michael Hammock, Steven Pinkney's brother-in-law, if Mr. Hammock has the capacity to sue, then he can appear pro se or through counsel, *see* 28 U.S.C. § 1654, but Steven Pinkney cannot represent him in this proceeding.] If the power of attorney is invalid, and Danielle is without a duly appointed representative, then she may sue only "by a next friend or by a guardian ad litem." Fed.R.Civ.P. 17(c).

Because Steven Pinkney, a non-attorney, sought to represent an allegedly incompetent adult, his appearance violated the rule in *Osei-Afriyie.* Consequently, the District Court erred insofar as it dismissed Danielle Pinkney's claims on the merits before it determined who can

> properly represent her interests in this action. We will, therefore, vacate the District Court's judgment on the merits of the complaint and remand the matter for further proceedings on the representation issue. *See Osei-Afriyie,* 937 F.3d at 883.

42 F.App'x at 536—37.

B. The original Complaint did not comply with I.R.C.P. 11(a), as it was not signed by an attorney licensed to practice law in the State of Idaho, nor was it signed by the *pro se* party personally.

Rohel cites to *Black v. Ameritel Inns, Inc.*, 139 Idaho 511, 81 P.3d 416 (2003), to support her position that the original Complaint did not comply with I.R.C.P. 11(a) (also referred to as Rule 11(a)), as it was not signed by either an attorney licensed in the state of Idaho or the *pro se* party personally. Def.'s Mem. in Supp. of Mots., 3–4, 5. Clemmons argues that Rule 11(a) permitted her to sign the Complaint as she is the real party in interest. Pl.'s Mem. in Resp., 6–7. Based on that argument, Clemmons asserts that the original Complaint complied with Rule 11. *Id.* As the Court has both discussed and established above, the real party in interest in this particular matter is Luck. Therefore, that issue need not be discussed again. However, the Court will briefly discuss Rule 11 and the relevant portion of *Black* below.

The first part of Rule 11(a) reads: "**Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record licensed in the State of Idaho, in the individual attorney's name, or by a party personally if the party is unrepresented." I.R.C.P. 11 (emphasis in original). Because the rule uses the word "must," it is clear that a pleading will not be in compliance with Rule 11(a) unless it contains one of the two above-described signatures.

In *Black*, the appellants hired an attorney to represent them in a lawsuit against Ameritel for the alleged denial of accommodations. 139 Idaho 511, 512, 81 P.3d 416, 417 (2003). The attorney was licensed to practice law in the state of Washington, but

was not licensed in the state of Idaho. After completing the necessary prerequisite, the Washington attorney filed a complaint in Idaho state court.[7] The "attorney signed the names of the [a]ppellants, followed by his initials, as the agent of [the] unrepresented parties." *Id.* The Washington attorney made the decision to initial the complaint, after he "learned the Idaho attorney abandoned the case at the last minute," so that it could be filed before the 90-day statute of limitations expired. *Id.* at 512, 514, 81 P.3d at 417, 419. Ameritel moved to strike the complaint on the grounds that it did not comply with the signature requirement of what is now I.R.C.P. 11(a). *Id.* at 512, 81 P.3d at 417. The Court of Appeals of Idaho found that the original complaint did not comply with the requirements of Rule 11(a) and was thus defective "because an agent signed on behalf of the Appellants [...]." *Id.* The Supreme Court of Idaho held that since an agent cannot sign a complaint for an unrepresented party, the signature requirement of Rule 11 was not complied with. *Id.* at 514, 81 P.3d at 419.

Here, the original Complaint was not signed by either an attorney licensed to practice law in the state of Idaho or the *pro se* party personally. As discussed above, Clemmons is not a licensed attorney and was prohibited from representing Luck in a *pro se* capacity. Additionally, the only person that could have appeared *pro se* to pursue the claim alleged in the Complaint was Luck herself, was she not considered incompetent. Following Rule 11(a) and the holding in *Black*, the Court finds that the original Complaint did not comply with the signature requirement of Rule 11(a), as the

---

[7] The necessary prerequisite is as follows:

> As required by Idaho law, the Washington attorney filed a complaint with the Idaho Commission On Human Rights (Commission) on behalf of the Appellants before filing this lawsuit. Idaho Code § 67–5908(2) (2002). The Commission dismissed their complaint. Upon the dismissal of a complaint before the Commission, a complainant has 90 days to file a civil action in district court. *Id.*

Black v. Ameritel Inns, Inc., 139 Idaho 511, 512, 81 P.3d 416, 417 (2003).

original Complaint was not signed by either an attorney licensed to practice law in the state of Idaho or the *pro se* party personally.

C. The cure provision of I.R.C.P. 11 is not applicable to the original Complaint, as the original Complaint is found to be signed in violation of I.R.C.P. 11(a).

The next issue is whether the original Complaint is signed in violation of Rule 11(a), in which case the cure provision of Rule 11 would not be applicable, or whether the original Complaint is unsigned, in which case the cure provision of Rule 11 would be applicable. If the original Complaint is found to be curable, then the Proposed Amended Complaint would have the ability to relate back to the filing date of the original Complaint, thus tolling the two-year statute of limitations period of I.C. § 5-219. If the original Complaint is found to be incurable, then the original Complaint is deemed a nullity and must be stricken. Rohel argues that the original Complaint was signed in violation of Rule 11, and thus incurable. Def.'s Mem. in Supp. of Mots., 5. Clemmons argues that her signature on the original Complaint qualifies as a technical issue and is thus allowed to be corrected under Rule 11(a). Pl.'s Mem. in Resp., 7.

The cure provision of Rule 11(a) states, "[t]he court must strike an *unsigned* paper unless the omission is promptly corrected after being called to the attorney's or party's attention." I.R.C.P. 11 (emphasis added). While some states take the position that a complaint physically containing a signature is actually deemed *unsigned* if it does not contain the signature of either an attorney licensed in that state or the *pro se* party, Idaho does not. *See Biomed Comm, Inc. v. State Dep't of Health Bd. of Pharmacy*, 146 Wash. App. 929, 942–43, 193 P.3d 1093, 1099 (2008) (emphasis added).

In *Black v. Ameritel Inns, Inc.*, the Court of Appeals determined that the original complaint was defective for purposes of Rule 11(a), "but that the complaint should be

treated as unsigned rather than [signed] in violation of Rule [11(a)]." 139 Idaho 511, 512, 81 P.3d 416, 417 (2003). "The Court of Appeals then reasoned that since the complaint was unsigned, the Appellants, pursuant to the Rule, could promptly remedy the defect by properly signing the complaint." *Id.* at 512–13, 81 P.3d at 417–18. However, the Supreme Court of Idaho completely disagreed with the Court of Appeals in that respect and, in reversing the decision, held:

> The rule requires a signature of only two varieties, i.e., licensed attorney, or pro se party. The rule also allows a cure for pleadings with an omitted signature. It follows that the provision allowing a cure is intended to benefit parties or attorneys who inadvertently omit signing their pleadings. A cure is provided so that cases can be heard on their merits because "Rule 11 is not intended to be a stumbling block to the pursuit of justice. The primary goal in the application of Rule 11 is to deter pleading and motion abuses." *Hadlock v. Baechler*, 136 F.R.D. 157, 159 (W.D.Ar.1991). However, the Washington attorney and the Appellants did not omit their signatures inadvertently. Rather, the Washington attorney drafted, signed, and placed his initials on the complaint so that it would be filed in time. Therefore, we hold that the complaint was signed, but in violation of Rule 11.

Id. at 514, 81 P.3d at 419. In a brief discussion comparing I.R.C.P. 11(a) to Federal Rule of Civil Procedure (F.R.C.P.) 11, the Court reasoned, "it is reasonable to conclude the Idaho and Federal rules differ because the federal cure provision applies equally to unsigned complaints and complaints signed in violation of Rule 11, whereas the Idaho Rule 11 cure provision only applies to unsigned complaints." *Id.* Therefore, if a complaint contains a signature that does not belong to either an attorney licensed in the state of Idaho or the *pro se* party personally, then the complaint is deemed to be signed in violation of Rule 11(a).

Here, the original Complaint was physically signed by Clemmons. There was no inadvertent omission of a signature present in this matter. Rather, it seems as though the Complaint was signed and filed with the full purpose and intent of falling within –

albeit on the last possible day – the two-year statute of limitations. Because this Court is bound by the holding in *Black*, this Court finds that the original Complaint was signed in violation of Rule 11(a). Therefore, because the Rule 11 cure provision only applies to unsigned complaints, the cure provision is not applicable to the original Complaint signed by Clemmons.

D. The Proposed Amended Complaint will not relate back to the filing date of the original Complaint, as the original Complaint is deemed a nullity.

Rohel argues that because the original Complaint was signed in violation of I.R.C.P. 11(a), the original Complaint is a nullity. Def.'s Mem. in Supp. of Mots., 5. Therefore, "[i]t must be stricken and given no legal effect [...]." *Id.* Rohel again cites to *Black v. Ameritel Inns, Inc.*, 139 Idaho 511, 81 P.3d 416 (2003), as well as *Pierce v. McMullen*, 156 Idaho 465, 328 P.3d 445 (2014), in support of her position that the original Complaint is a nullity and should be stricken.

In *Black*, the district court granted Ameritel's motion to strike the complaint, and subsequently denied the Appellants' motion to reconsider on the grounds the original complaint was defective. 139 Idaho at 512, 81 P.3d at 417. Therefore, "the 90–day statute of limitation was not tolled by filing the original complaint[,] and because the original complaint was defective, the amended complaint did not 'relate back' to the date the original complaint was filed." *Id.* "As a result, the amended complaint was filed outside the 90–day limitation period." *Id.*

On appeal from the Court of Appeals, after concluding that the complaint was signed in violation of Rule 11, the Supreme Court of Idaho next stated the Appellants' "amended complaint may not relate back in time as a cure to the previous complaint because the complaint was signed in violation of Idaho Rule 11." 139 Idaho 511, 514,

81 P.3d 416, 419 (2003). Therefore, the amended complaint was time barred because it was filed "beyond the 90-day statute of limitations period." *Id.*

Applying the above-decision from *Black* to the facts of this matter, because the original Complaint was signed by Clemmons in violation of Rule 11(a), the Proposed Amended Complaint may not relate back to the filing date of the original Complaint. Therefore, the Proposed Amended Complaint will be time barred, as it was filed after the two-year statute of limitations period of I.C. § 5-219.

Rohel cites to *Pierce v. McMullen*, which is the only Idaho case that references the nullity concept in relation to a pleading, albeit briefly. 156 Idaho 465, 468, 328 P.3d 445, 448 (2014). In *Pierce*, the plaintiff filed a complaint against the defendants, McMullen and Highland Financial, LLC, and thereafter filed an amended complaint. 156 Idaho 465, 468, 328 P.3d 445, 448 (2014). McMullen "filed a notice of appearance on behalf of himself and on behalf of Highland Financial." *Id.* McMullen then "filed an answer to the amended complaint in his behalf and on the behalf of Highland Financial." *Id.* "Mr. McMullen was not licensed to practice law in Idaho, therefore his appearance on behalf of Highland Financial and the answer he filed on its behalf were nullities." *Id.* The Supreme Court of Idaho, in discussing the entry of default and a default judgment, stated the following as to the nullity concept:

> After [the plaintiff] served the amended complaint on the Defendants, Mr. McMullen filed an answer. In his answer, Mr. McMullen purported to answer also on behalf of the limited liability company, but because he was not licensed to practice law in Idaho his attempt to answer on the company's behalf was a nullity.

Id. at 469, 328 P.3d at 449. Lastly, on the issue of nullity, the Court stated that "because [McMullen] was not licensed to practice law in Idaho[,] his attempt to answer on the company's behalf was a nullity." *Id.* at 471, 328 P.3d at 451. "To consider that

as an answer on behalf of the company would be permitting the unauthorized practice of law. *Kyle v. Beco Corp.*, 109 Idaho 267, 271–72, 707 P.2d 378, 382–83 (1985)." *Id.*

Though the facts of *Pierce* are distinguishable from the facts of the matter currently before the Court, the nullity concept is applicable. The Court in *Pierce* explicitly states that because the defendant was not licensed to practice law in Idaho, his attempt to act on behalf of the company made the filed answer a nullity. Applying that finding to the facts of this case, because Clemmons was not licensed to practice law in the state of Idaho, her attempt to act on behalf of Clemmons made the original Complaint a nullity.

This Court recognizes fully that this produces a harsh result. Luck will not have her day in court against those responsible for her injuries due to well-intentioned but misguided actions by Clemmons. It is tempting for this Court to adopt the following from the State of Illinois Supreme Court, in *Downtown Disposal Services, Inc., v. City of Chicago,* 979 N.E.2d 50, 365 Ill.Dec. 684 (Ill. 2012), which ameliorates the harshness of the nullity rule:

> Nullity Rule
>
> Courts in this country, including this court, unanimously agree that a corporation must be represented by counsel in legal proceedings. However, courts disagree on the consequences the lack of representation has on actions taken by nonlawyers on behalf of a corporation. Some courts, including our appellate court, have held that such actions are a nullity and warrant dismissal, the entry of a default judgment against the corporation, or vacatur of any judgment rendered. The defect is deemed incurable and goes to the court's power to exercise subject matter jurisdiction. See *Siakpere v. City of Chicago,* 374 Ill.App.3d 1079, 1081, 313 Ill.Dec. 512, 872 N.E.2d 495 (2007) (complaint for administrative review filed by corporate officer on behalf of corporation a nullity); *Midwest Home Savings & Loan Ass'n v. Ridgewood, Inc.,* 123 Ill.App.3d 1001, 79 Ill.Dec. 355, 463 N.E.2d 909 (1984) (notice of appeal filed on behalf of corporation by person not entitled to practice law held to be a nullity); *Housing Authority v. Tonsul,* 115 Ill.App.3d 739, 71 Ill.Dec. 369, 450 N.E.2d 1248 (1983) (judgment void even if layperson merely signs complaint and all other appearances are by attorney). See also *Land*

Management, Inc. v. Department of Environmental Protection, 368 A.2d 602 (Me.1977); *Massongill v. McDevitt,* 1989 OK CIV APP 82, 828 P.2d 438; *Tracy–Burke Associates v. Department of Employment Security,* 699 P.2d 687 (Utah 1985); *Jadair Inc. v. United States Fire **689 *55 Insurance Co.,* 209 Wis.2d 187, 562 N.W.2d 401 (1997).

Other jurisdictions take the approach that actions by nonattorneys on behalf of a corporation are curable defects, allowing the corporation a reasonable time to obtain counsel and make any necessary amendments. These courts liberally construe the rules of civil procedure and emphasize substance over form to advance the policy favoring resolution of cases on the merits. See, *e.g., United States v. High Country Broadcasting Co.,* 3 F.3d 1244 (9th Cir.1993); *Jones v. Niagara Frontier Transportation Authority,* 722 F.2d 20, 23 (2d Cir.1983); *Southwest Express Co. v. Interstate Commerce Comm'n,* 670 F.2d 53 (5th Cir.1982); *Strong Delivery Ministry Ass'n v. Board of Appeals,* 543 F.2d 32 (7th Cir.1976); *United States v. 9.19 Acres of Land, More or Less, Situate in Marquette County, Michigan,* 416 F.2d 1244 (6th Cir.1969); *Flora Construction Co. v. Fireman's Fund Insurance Co.,* 307 F.2d 413 (10th Cir.1962); *Operating Engineers Local 139 Health Benefit Fund v. Rawson Plumbing, Inc.,* 130 F.Supp.2d 1022 (E.D.Wis.2001); *A–OK Construction Co. v. Castle Construction Co.,* 594 So.2d 53 (Ala.1992); *Boydston v. Strole Development Co.,* 193 Ariz. 47, 969 P.2d 653, 656 (1998) (*en banc*); *Rogers v. Sonoma County Municipal Court,* 197 Cal.App.3d 1314, 243 Cal.Rptr. 530, 530–33 (1988); *BQP Industries, Inc. v. State Board of Equalization,* 694 P.2d 337, 341–42 (Colo.App.1984); *Torrey v. Leesburg Regional Medical Center,* 769 So.2d 1040, 1045–46 (Fla.2000); *Rainier Holdings, Inc. v. Tatum,* 275 Ga.App. 878, 622 S.E.2d 86 (2005); *Oahu Plumbing & Sheet Metal, Ltd. v. Kona Construction, Inc.,* 60 Haw. 372, 590 P.2d 570 (1979); *Hawkeye Bank & Trust, National Ass'n v. Baugh,* 463 N.W.2d 22, 26 (Iowa 1990); *First Wholesale Cleaners Inc. v. Donegal Mutual Insurance Co.,* 143 Md.App. 24, 792 A.2d 325 (2002); *Waite v. Carpenter,* 1 Neb.App. 321, 496 N.W.2d 1 (1992); *KSNG Architects, Inc. v. Beasley,* 109 S.W.3d 894 (Tex.Ct.App.2003); *Graham v. Davis County Solid Waste Management & Energy Recovery Special Service District,* 1999 UT App 136, ¶¶ 15–16, 979 P.2d 363; *Starrett v. Shepard,* 606 P.2d 1247, 1253–54 (Wyo.1980).

This court has recently discussed the nullity rule on two occasions wherein we declined to apply it. See *Applebaum v. Rush University Medical Center,* 231 Ill.2d 429, 326 Ill.Dec. 45, 899 N.E.2d 262 (2008); *Ford Motor Credit Co. v. Sperry,* 214 Ill.2d 371, 292 Ill.Dec. 893, 827 N.E.2d 422 (2005). However, as the City maintains, these two cases are distinguishable. Neither involved a nonattorney representing a corporation in a legal proceeding. The City urges us to follow the line of authority holding that any unauthorized practice of law by a nonattorney is a nullity. We decline to do so.

A recent decision of the Seventh Circuit, *In re IFC Credit Corp.,* 663 F.3d 315 (7th Cir.2011), authored by Judge Posner, provides insight. The question before the court was whether a corporate bankruptcy petition,

signed only by the president of the company who was not an attorney, rendered the proceedings void or, in state court terms, a nullity. *In re IFC Credit Corp.,* 663 F.3d at 317. If so, the court lacked jurisdiction over the matter and the error could not be cured by amending the petition, signed by an attorney, even one day after the original petition had been filed. The Seventh Circuit held that the proceedings were not void.

First, the court concluded that the rule prohibiting corporations from litigating without counsel could not be deemed a rule of subject-matter jurisdiction. *In re IFC Credit Corp.,* 663 F.3d at 319. In so finding, the court noted that the United States Supreme Court has "taken a sharp turn toward confining dismissals for want of subject-matter jurisdiction to cases in which the federal tribunal has been denied by the Constitution or Congress or a valid federal regulation the authority to adjudicate a particular type of suit." *In re IFC Credit Corp.,* 663 F.3d at 319. The court stated that "[t]he primary distinction is thus between classes of case that the Constitution or legislation declares off limits to the federal courts and errors in the conduct of cases that are within limits." *In re IFC Credit Corp.,* 663 F.3d at 320. The court reasoned that bankruptcy proceedings are "the type[s] of proceeding[s] that Congress has authorized federal courts to handle, while the rule barring lay representation of a corporation concerns the conduct of cases that are within that authority." *In re IFC Credit Corp.,* 663 F.3d at 320.

The court then further found that the consequences which result from a finding that the court lacks jurisdiction can be severe. In some cases, the statute of limitations may have run, thus depriving the corporation of access to the courts. Where the statute of limitations has not run, requiring a "do over" is costly, particularly if the lack of representation is discovered late in a protracted litigation. The court concluded that these consequences "are not appropriate punishments for pro se litigation by a corporation." *In re IFC Credit Corp.,* 663 F.3d at 320. Finally, the court posited there was "no danger that litigation by unrepresented corporations will flourish" because judges dislike *pro se* litigation and "will be vigorous enforcers of the rule that bars it, except in cases like this where the violation was utterly inconsequential." *In re IFC Credit Corp.,* 663 F.3d at 321.

The court reasoned that the rule against nonattorneys representing corporations "should be enforced, but sanctions for its violation should be proportioned to the gravity of the violation's consequences." *In re IFC Credit Corp.,* 663 F.3d at 321. In *In re IFC Credit Corp.,* there were no adverse consequences by the filing error. As such, there was no reason to impose any sanction, let alone dismissal. *In re IFC Credit Corp.,* 663 F.3d at 321.

We find the reasoning of *In re IFC Credit Corp.* sound. This court's definition of subject matter jurisdiction is similar to that of the supreme court precedent. See *In re Luis R.,* 239 Ill.2d 295, 300, 346 Ill.Dec. 578, 941 N.E.2d 136 (2010) ("This court defines 'subject matter jurisdiction' as a court's power " 'to hear and determine cases of the general class to which the proceeding in question belongs.' " [Citation.]"); *Wood v. First*

National Bank of Woodlawn, 383 Ill. 515, 522, 50 N.E.2d 830 (1943) ("Jurisdiction of the subject matter is the power to adjudge concerning the general question involved, and if a complaint states a case belonging to a general class over which the authority of the court extends, the jurisdiction attaches and no error committed by the court can render the judgment void."). In this case, as in *In re IFC Credit Corp.,* our constitution has authorized the legislature to provide the circuit court with the power to review administrative proceedings. Thus, in this case, as in *In re IFC Credit Corp.,* the rule prohibiting lay representation concerns the conduct of cases and the orderly administration of justice, not subject matter jurisdiction.

Further, we agree with the Seventh Circuit that a *per se* nullity rule is unreasonable and that sanctions for violating the rule against the unauthorized practice of law "should be proportioned to the gravity of the violation's consequences." As we reasoned in *Applebaum,* because the consequences of applying the nullity rule to a case can be harsh, it should be invoked only where it fulfills the purposes of protecting both the public and the integrity of the court system from the actions of the unlicensed, and where no other alternative remedy is possible. *Applebaum,* 231 Ill.2d at 439, 326 Ill.Dec. 45, 899 N.E.2d 262 (citing *Sperry,* 214 Ill.2d at 382, 292 Ill.Dec. 893, 827 N.E.2d 422).

We hold there is no automatic nullity rule. Instead, the circuit court should consider the circumstances of the case and the facts before it in determining whether dismissal is proper. The circuit court should consider, *inter alia,* whether the nonattorney's conduct is done without knowledge that the action was improper, whether the corporation acted diligently in correcting the mistake by obtaining counsel, whether the nonattorney's participation is minimal, and whether the participation results in prejudice to the opposing party. See, *e.g., Szteinbaum v. Kaes Inversiones y Valores, C.A.,* 476 So.2d 247, 252 (Fla.Dist.Ct.App.1985); *Starrett v. Shepard,* 606 P.2d 1247, 1253–54 (Wyo.1980). The circuit court may properly dismiss an action where the nonlawyer's participation on behalf of the corporation is substantial, or the corporation does not take prompt action to correct the defect. See, *e.g., Joseph Sansone Co. v. Bay View Golf Course,* 97 S.W.3d 531, 532 (Mo.Ct.App.2003); *Niklaus v. Abel Construction Co.,* 164 Neb. 842, 83 N.W.2d 904, 911 (1957).

In the instant case, the trial court should have allowed Downtown Disposal to amend its complaints for administrative review. It is evident that Van Tholen was unaware he could not prepare and sign the complaints on behalf of the corporation. In fact, the administrative law officer advised Van Tholen that: "You have a right to appeal the decision to the Circuit Court within 35 days of today's date, and you would do that in Room 602 of the Daley Center." Even though the corporation was the party before the administrative hearing, Van Tholen appeared on its behalf and he, as a layperson, could reasonably have interpreted the "you" to mean him personally. Likewise, Van Tholen's participation was minimal. Van Tholen filled in a preprinted blank form with plaintiff's name, address, the date of the administrative decision, and the docket numbers.

Van Tholen made no unscrupulous attempt to litigate on behalf of the corporation. Downtown Disposal retained counsel prior to any involvement by the City in the case other than having been served. As this case demonstrates, the absence of counsel at the threshold stage of the lawsuit—filing the complaint for administrative review—could not have prejudiced the City. As such, Downtown Disposal's commencement of the proceedings without the assistance of counsel was essentially inconsequential. See *In re IFC Credit Corp.,* 663 F.3d at 321. For all practical purposes, Downtown Disposal was represented by counsel before the City became a player in the action, so neither the City nor the trial court was ever in the position of having to deal with a corporation unrepresented by counsel.

Further, deeming the complaints a nullity would be harsh: it "would yield the ironic result of prejudicing the constituents of the corporation, the very people sought to be protected by the rule against the unauthorized practice of law." *Szteinbaum,* 476 So.2d at 250. See also *First Wholesale Cleaners Inc. v. Donegal Mutual Insurance Co.,* 143 Md.App. 24, 792 A.2d 325, 331 (2002) (filing of notice of appeal on behalf of corporation is "a protective course of action, meant to preserve **692 *58 the corporation's right to appeal"). Thus, rather than protecting the litigant (Downtown Disposal), application of the nullity rule would prejudice it. Downtown Disposal would lose its right to appeal and, thus, any remedy as might be provided for by law.

Moreover, there is clearly an alternative remedy to dismissal—allowing amendment of the complaints to add counsel's signature. Thus, it would indeed be a very harsh consequence to the corporation to apply the nullity rule to the case at bar.

We further disagree with the City that, if we affirm the appellate court, nonattorney representation of corporations will become commonplace. We agree with the Seventh Circuit that circuit court judges will be vigorous enforcers of the rule prohibiting nonattorneys from representing corporations.

Based on the foregoing principles, we reject the City's contention that *any* act of legal representation undertaken by a nonattorney on behalf of a corporation renders the proceedings void *ab initio.* We hold that the lack of an attorney's signature on a complaint for administrative review filed on behalf of a corporation does not render the complaint null and void or mandate dismissal in all instances. In situations where a nonattorney signs a complaint for administrative review on behalf of a corporation, the trial court should afford the corporation an opportunity to retain counsel and amend the complaint if the facts so warrant.

CONCLUSION

We conclude that the trial court erred in dismissing Downtown Disposal's complaints for administrative review based on the fact they were signed by Van Tholen because the lack of an attorney's signature was not jurisdictional and, therefore, did not render the proceedings null and void. Moreover, in the instant case, application of the nullity rule would be a harsh result since neither of the purposes underlying the rule

> are implicated and an alternative remedy was available. Accordingly, we affirm the appellate court's judgment, which reversed the circuit court's dismissal of Downtown Disposal's complaints and remanded for further proceedings.

979 N.E.2d at 54-58, 365 Ill.Dec. at 688-92. While this Court similarly finds as a factual matter, no prejudice would result to Rohel were this Court to not find a nullity, this Court chooses not to adopt the reasoning behind the majority decision in *Downtown Disposal Services* for two reasons. First, the decision by the Supreme Court of Illinois in that case was a 4-3 decision. The minority decision is equally well written, equally supported by case law, equally persuasive and more focused on the unlawful practice of law. 979 N.E.2d at 58-73, 365 Ill.Dec. at 692-707. Second, while Idaho appellate courts have not squarely addressed this issue in detail, *Pierce* and *Kyle* certainly indicate to this Court that Idaho appellate courts would be equally protective against the unlawful practice of law.

IV. CONCLUSION AND ORDER

In conclusion, as the original Complaint was signed in violation of Rule 11(a), the original Complaint must be stricken. Because the original Complaint must be stricken, the Proposed Amended Complaint will not successfully relate back to the filing date of the original Complaint. Because the Proposed Amended Complaint will not relate back to the filing date of the original Complaint, the Proposed Amended Complaint is this time barred, as it was filed after the two-year statute of limitations provided for in I.C. § 5-219. Therefore, because the Proposed Amended Complaint was filed outside the statute of limitations period, the case against Rohel must be dismissed.

Had this lawsuit been filed at some point prior to the last day of the two-year statute of limitations, the outcome may have been different, and any amended complaint may have fallen within the statute of limitations period. Unfortunately, that

was not the case here. Oddly, had Clemmons filed an unsigned initial Complaint, the result would have been different. Had Luck signed the initial Complaint, the result would have been different. Given the uncontradicted facts, applied to the Idaho Rules of Civil Procedure, Idaho appellate case law and Idaho statutes, the only result this Court can reach is to grant defendant's motions.

For the reasons set forth above;

IT IS HEREBY ORDERED that Defendant's Motion to Strike is GRANTED.

IT IS FURTHER ORDERED Defendant's Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that counsel for Defendant prepare a Judgment consistent with this decision.

Entered this 24th day of June, 2019.

John T. Mitchell, District Judge

Certificate of Service

I hereby certify that on the 24th day of June, 2019 a true and correct copy of the foregoing was mailed, postage prepaid, emailed or sent by interoffice mail or facsimile to:

Lloyd Herman
lloydherm@aol.com ✓

Jaron A. Robinson
jaron.robinson@libertymutual.com ✓

By Jeanne Clausen, Secretary