



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009

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February 17, 2023

### LETTER OPINION

Joseph W. Stuart, Esq.  
Joseph W. Stuart, PLC  
10427 North Street, Suite 200  
Fairfax, VA 22030  
*Counsel for the Defendant*

Cynthia Zegeye  
15872 Meherrin Way  
Woodbridge, VA 20136  
*Guardian for the Plaintiff, an Incapacitated Adult*

Re: *Samuel Somuah, an Incapacitated Adult v. Gertrude Nortey Ofusu-Appiah*  
Case Nos. CL-2021-15938 and CL-2021-15582

Dear Counsel and Ms. Zegeye:

Before the Court is the defendant's Motion to Strike the plaintiff's Complaint for Divorce, which Complaint was filed *pro se* by Cynthia Zegeye (hereinafter "Ms. Zegeye"), guardian for the plaintiff, who is an incapacitated adult. For the reasons set forth herein, the defendant's Motion to Strike is granted and this case is dismissed without prejudice.<sup>1</sup>

The facts pertinent to the defendant's Motion to Strike are not in dispute. By Order dated July 29, 2021, and in accordance with Virginia Code Ann. § 64.2-2000 et seq., this Court found

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<sup>1</sup> The defendant's motion is styled as a "Motion to Strike Pleadings." The Court rules on the motion as a motion to strike or dismiss the plaintiff's Complaint for Divorce, which the Court grants. Consideration of plaintiff's other pleadings is therefore moot.

**OPINION LETTER**

Samuel Somuah (“Mr. Somuah”) to be an incapacitated adult in need of a guardian. The Court appointed Ms. Zegeye as guardian for Mr. Somuah, who is her father.

On November 12, 2021, Ms. Zegeye filed a motion entitled “Petition for Court Authorization or Consent to Initiate Change in the Incapacitated Adult Person’s Marital Status.” By Order dated November 19, 2021, and pursuant to Virginia Code Ann. § 64.2-2019(D), this Court granted Ms. Zegeye’s motion.

Also on November 19, 2021, in her capacity as Guardian of Mr. Somuah, Ms. Zegeye filed the Complaint for Divorce. The Complaint’s caption identifies the plaintiff as “Samuel Somuah, an Incapacitated Adult.” Ms. Zegeye refers to herself in the Complaint as “Plaintiff Guardian.”

Ms. Zegeye filed the Complaint for Divorce *pro se*. She is not an attorney and is not licensed to practice law in the Commonwealth of Virginia. As such, she is a “non-lawyer” as that term is defined by the Rules of the Supreme Court of Virginia.

The defendant in the present matter filed a Motion to Strike, arguing that Ms. Zegeye’s *pro se* filing of the Complaint for Divorce on behalf of Mr. Somuah is the unauthorized practice of law. As such it is, as the defendant argues, “without legal effect” and is a “nullity.”

Ms. Zegeye argues that pursuant to her appointment as guardian for Mr. Somuah, as well as the Court’s Order of November 19, 2021 authorizing her to “initiate a change in the incapacitated person’s marital status pursuant to Va. Code § 64.2-2019,” she was granted the legal authority to file and litigate *pro se* the Complaint for Divorce on behalf of Mr. Somuah.

The defendant’s Motion to Strike is well-founded. Virginia Code Ann. § 64.2-2019(D) authorizes, in pertinent part, that a guardian may seek and obtain court authorization “to initiate a change in the [incapacitated] person’s marital status.” Upon obtaining such court authorization, a non-lawyer guardian may commence, through legal counsel, to file and litigate a complaint for divorce on behalf of the incapacitated person. However, nothing in the statute authorizes the non-lawyer guardian to file *pro se* a complaint for divorce on behalf of an incapacitated person, as occurred in the present matter. To do so constitutes the unauthorized practice of law.

Neither party has cited, nor has the Court found, any Virginia caselaw directly on point. There is, however, persuasive authority found in the Rules of the Supreme Court of Virginia, Unauthorized Practice of Law Opinions, and analogous caselaw, as well as public policy considerations, which in the aggregate compel the Court’s finding today.

The Rules of the Supreme Court of Virginia govern the practice of law, as well as the unauthorized practice of law, and state that “No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself or herself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute.” The term “non-lawyer” is defined as “any person, firm, association or corporation

not duly licensed or authorized to practice law in the Commonwealth of Virginia.” The Rules set forth specific, limited exceptions to this prohibition. Guardians are not included in the listed exceptions. Rules of the Supreme Court of Virginia, Part 6, §§ 1-3.

By analogy, Unauthorized Practice of Law (“UPL”) Opinion 218 addressed the question of whether the Uniform Power of Attorney Act authorizes “a non-lawyer agent/attorney-in-fact to prepare, sign, and file pleadings . . . on behalf of the principal and then appear and represent the interests of the principal before the court, without engaging in Unauthorized Practice of Law?” Answering in the negative, the Opinion affirmed UPL Opinion 194, which found that “a general power of attorney is not sufficient to confer upon a non-lawyer the legal authority to practice law on the principal’s behalf.” The Opinion found that a power of attorney may not be considered as an authority to practice law, citing *inter alia*, caselaw from the United States District Court for the Eastern District of Virginia. See *Banks v. Gates Judson & Assoc.*, No. 1:19-cv-1259 (E.D. Va. June 23, 2020) (“The right to litigate for oneself...does not create a coordinate right to litigate for others.”) (quoting *Myers v. Loudoun County Public Schools*, 418 F.3d 395, 400 (4<sup>th</sup> Cir. 2005)).

In *Kone v. Wilson*, 272 Va. 59, 630 S.E.2d 744 (2006), the Supreme Court of Virginia addressed the analogous issue of whether Kone, as administrator of a decedent’s estate, could maintain a wrongful death action *pro se*. As personal representative of the estate, Kone argued that he “step[ped] into the shoes” of the decedent and therefore pursuant to Virginia Code Ann. § 8.01-50 had the authority to initiate the wrongful death action without legal counsel. The Supreme Court disagreed, holding that the statute “vests this *right of action* in the decedent’s personal representative. The *cause of action*, however, does not belong to the personal representative but to the decedent’s beneficiaries.” *Id.* at 62, 630 S.E.2d at 746 (italics in original) (citations omitted).

The Supreme Court’s distinction between a *right of action* and a *cause of action* is critical and has equal force in the present case:

Thus, the personal representative merely acts as a surrogate for the decedent’s beneficiaries.

Here, because Kone’s right of action existed only to permit him to prosecute the cause of action belonging to [decedent’s] statutory beneficiaries, and not to maintain any cause of action personal to Kone himself, he was not entitled to file the wrongful death action *pro se*. His surrogate status precluded a *pro se* filing because he was acting in a representative capacity for the true parties in interest, [decedent’s] beneficiaries. Therefore, we hold that the circuit court correctly concluded that Kone could not file a valid wrongful death action *pro se*.

*Id.* at 62-63, 630 S.E.2d at 746.

Similarly, in the present matter, Ms. Zegeye as guardian is acting as a surrogate for the incapacitated person. The right of action conferred by statute exists only to permit her to “prosecute the cause of action belonging to the [incapacitated person], and not to maintain any cause of action personal” to herself. Her “surrogate status” precludes filing the Complaint for Divorce *pro se* as she is only “acting in a representative capacity for the true [party] in interest,” namely the incapacitated person, Mr. Somuah. *Id.*

Analogous decisions of this Court have produced similar results. *See, e.g., Wood v. Marshall*, 109 Va. Cir. 259 (Fairfax County Circuit Court 2022) (personal representative may not bring *pro se* action on behalf of decedent’s estate); *Farmville Group, LLC v. Shapiro Brown & Alt, LLP*, 101 Va. Cir. 81 (Fairfax County Circuit Court 2019) (non-lawyer former member or trustee in liquidation may not litigate claim *pro se* on behalf of dissolved limited liability company); *cf Heu v. Kim*, 107 Va. Cir. 100 (Fairfax County Circuit Court 2021) (power of attorney agent may not maintain a divorce proceeding on behalf of his incapacitated brother);.

There are also significant public policy considerations supporting the general prohibition against non-lawyers representing others, which have compelling force in the present matter. In this regard, UPL Opinion 218 cited *Brown v. Ortho Diagnostic Systems, Inc.*, 868 F.Supp. 168 (E.D. Va. 1994), which discussed these considerations:

The near uniform proscription on non-lawyers representing others in court is soundly based on two separate, but complementary policy considerations. First, there is a strong and compelling state interest in regulating the practice of law. (Footnotes omitted).

Regulation that excludes non-lawyers from representing others reflects that the conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents, but also for his adversaries and the court. The lay litigant frequently files pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative. In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney’s ethical responsibilities, including, importantly, the duty to avoid litigating unfounded or vexatious claims. *See Lindstrom*, 632 F.Supp. at 1538 (quoting *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir.1983)).

The second reason unlicensed laymen are not typically permitted to represent others in court concerns the importance of what is at stake for the litigant, and the final nature of the adjudication of the rights in question. Thus, a party may be bound, or its rights waived, by its legal representative. When that representative is a licensed attorney there are grounds to believe that the representative’s character, knowledge and training are equal to the responsibility. (Footnote omitted). In addition, remedies and sanctions are available against the lawyer that are not available against nonlawyers,


including ethical misconduct sanctions and malpractice suits. In sum, litigation is akin to navigating hazardous waters; federal courts are willing to allow individuals to steer their own boats, and perhaps founder or run aground; but federal courts are not willing to permit individuals to risk the safety of others' boats.

*Id.* at 171-172.

In her capacity as guardian for Mr. Somuah, who is an incapacitated adult, Ms. Zegeye acted as a surrogate in filing the Complaint for Divorce on his behalf. While she was statutorily vested with the right of action as his guardian, the cause of action was his and his alone. Her surrogate status as guardian precluded her from filing the complaint *pro se* as she was only acting in a representative capacity for the true party in interest, namely the incapacitated person, Mr. Somuah. *Kone*, 272 Va. at 62-63, 630 S.E.2d at 746. As a non-lawyer, as that term is defined by the Rules of the Supreme Court of Virginia, she has engaged in the unauthorized practice of law. Accordingly, the Complaint for Divorce is a legal nullity.

For the reasons set forth herein, the defendant's Motion to Strike is granted and this matter is dismissed without prejudice. An Order in accordance with this Letter Opinion shall issue this day.

Sincerely,

A large black rectangular redaction box covers the signature area.

Manuel A. Capsalis  
Judge, Fairfax County Circuit Court

