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An SMLLC Conundrum: Disregarded for Federal Tax Purposes but Not in Federal Court

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Abstract

In Federal Court, the only member of a SMLLC may not represent the SMLLC unless that owner is also a lawyer. To do so exposes the SMLLC to dismissal as well as the owner to the unauthorized practice of law. The article explores the implications of these rules to small closely held LLCs.

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An SMLLC Conundrum: Disregarded for Federal Tax Purposes but Not in Federal Court

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Is a limited liability company (LLC) more like a corporation or a partnership in federal court?

We posed and answered that question in another article[1] a few years ago in the context of diversity of citizenship jurisdiction, and we concluded that an LLC is more like a partnership and, thus, the LLC adopts the citizenship of each of its members. Since every LLC member will be a citizen of the state of the LLC, diversity is destroyed in every case where the LLC is an indispensable party. As a result, *inter se* squabbles involving an LLC and its members on a point of state law will never qualify for federal diversity jurisdiction. But in other contexts the question of whether an LLC is more like a corporation or partnership continues to linger.[2]

The impetus for our earlier article was a Seventh Circuit case that chastised lawyers on both sides for a jurisdictional statement that was "transparently incomplete and incorrect" with an "insouciance toward the requirements of federal jurisdiction [which] has caused a waste of time and money."[3] The Seventh Circuit vacated the judgment, remanded to dismiss for lack of subject-matter jurisdiction, and ordered the lawyers to work for free to conclude the case:

> The costs of a doomed foray into federal court should fall on the lawyers who failed to do their homework, not on the hapless clients. The best way for counsel to make the litigants whole is to perform, without additional fees, any further services that are necessary to bring this suit to a conclusion in state court, or via settlement.[4]

So why are we posing a similar question again? This time the question is whether a single-member LLC (SMLLC) is more like a wholly owned corporation or a sole proprietorship. Unlike an LLC and a corporation, a SMLLC is disregarded as a legal entity separate from its owner for federal tax purposes and is treated as a sole proprietorship for many purposes.[5] That perspective can be confusing when the single owner seeks to speak for the entity in federal court. A sole proprietorship may appear pro se in federal court without the assistance of a lawyer. But the sole owner of a corporation may not, no matter how intermingled the claims involving the corporation and its

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[1] Bishop and Kleinberger, "Diversity Jurisdiction for LLCs? Basically, Forget About It," 14 Bus. L. Today 31 (September/October 2004).
[2] See Immerman, "In There Any Such Thing as an LLC Unit?," 11 BET 20 (July/August 2009) (discussing dissimilarity of LLC membership interests to shares of corporate stock).
[3] Belleville Catering Co. v. Champaign Marketplace, LLC, 350 F.3d 691 (CA-7, 2003).
[4] Id. at page 694.
[5] See Birmingham and Bandoblu, "Disregarded Entities," 11 BET 12 (July/August 2009) (discussing the SMLLC entity disregard in various contexts other than in federal court).

only owner.

Once again the Seventh Circuit has taken the lead in defining rules applicable to an LLC in federal court. In *Hagerman*,[6] the court determined that for purposes of pro se representation, an SMLLC is more like a corporation and partnership than a sole proprietorship. As a result, the sole owner may not represent an SMLLC in federal court unless that owner is also a lawyer. That is, unless the SMLLC obtains the services of a lawyer, it simply cannot defend or prosecute its case in federal court.[7] *Hagerman* is emblematic of continuing ambiguities relating to properly identifying the nature of an LLC in different contexts.[8]

In *Hagerman*, the Seventh Circuit analogized an SMLLC to a corporation and partnership to summarily determine that an SMLLC may not litigate in federal court unless it was represented by a lawyer. Since the case involved an SMLLC represented by its only member who was not a lawyer, the case was dismissed.[9] The decision raises important questions, because the dis- missed case considered an appeal involving an original criminal conviction against both the SMLLC and its member.

Unlike jurisdictional matters, pro se representation is a matter of judicial discretion, and issues concerning the unauthorized practice of law are implicated. The only federal authority that existed before *Hagerman* involved a *per curiam* opinion that likewise concluded that an SMLLC must be represented by a lawyer in federal court.[10] While a few earlier and later cases have applied the same rule to an LLC, these two cases are the only one to consider the representation of an SMLLC in federal court.[11] Therefore, these cases merit consideration regarding whether an SMLLC's disregarded status for federal tax purposes should permit pro se representation byits only owner.

Both *Lattanzio* and *Hagerman* failed to consider the practical and psychological implications of SMLLC disregarded entity status and simply treated an SMLLC as an indistinguishable species of LLC. While we also conclude it appropriate to determine this matter on the basis of independent entity legal status, the opposite position is not without merit. Further judicial confusion is likely and is now manifested in trial opinions where it was not entirely clear whether an SMLLC is present[12]—although the court presumed that was the case—yet the SMLCC was "represented" by its only owner.[13]

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[6] 545 F. 3d 579 (CA-7, 2008).
[7] In addition, the attempted representation may also constitute the unauthorized practice of law.
[8] See Kleinberger, "The Closely Held Business Through the Entity-Aggregate Prism," 40 Wake Forest L. Rev. 827 (2005).
[9] See supra note 6 at page 582.
[10] Lattanzio v. COMTA, 481 F. 3d 137 (CA-2, 2007).
[11] See, In re Shattuck, B.R. , 2009 WL 2252326 (CA-10, 2009) (lower court decision reversed because state appointed receiver for SMLLC was not a lawyer and, therefore, could not appear on behalf of the entity); Gilley v. Shoffner, 345 F.Supp.2d 563 (D.C. N.C., 2004); Kipp v. Royal & Sun Alliance Pers. Ins. Co., 209 F.Supp. 2d 962 (D.C. Wis., 2002); and Collier v. Cobalt, LLC, No. Civ. A. 01-2007, 2002 WL 726640 (D.C. La., 2002).
[12] It was likewise "unclear" whether Hagerman involved an SMLLC, a fact acknowledged by Judge Posner. See supra note 6 at 581 ("and possibly in this one, though when Wabash was created eight years ago it had two other members").
[13] See Taitt v. Secretary, 2009 WL 2902806 (D.C. Mich. 2009).

What makes an SMLLC different from a multiple-member LLC for this or any other purpose? Both are statutory legal entities separate from their members.[14] The same can be said of a corporation, regardless of the number of shareholders. Nonetheless, there are important differences, and those differences will likely manifest themselves in federal court in a different context, *Hagerman* notwithstanding. Federal tax rules generally ignore the separate existence of an SMLLC, except for employment taxes. Beyond peradventure, the owner of an SMLLC is in a different nontax legal relationship with the entity than a sole shareholder of a corporation. The distinctive SMLLC features create different legal relations and expectations for unsophisticated individual owners that at least merit consideration when deciding whether the owner of an SMLLC should be permitted to appear pro se on behalf of the entity.

The legal status of a wholly owned corporation is burdened with statutory management structures and operating requirements that were designed for publicly traded corporations. It is an uncomfortable fit. A single owner and operator must imagine being as many as four separate people:

1. A shareholder.
2. A member of the board of directors
3. (Often) the only officer and agent.
4. (Occasionally) the only employee.

The owner ignores these separate legal roles at his or her peril, for the price of the corporate styled liability shield involves respecting these formalities.

An LLC, particularly an SMLLC, however, is uniquely different. Gone are the roles re- quiring independent significance between ownership and management. Unless the owners specify otherwise, an LLC is managed directly by its owners without an independent board.[15] And the LLC equivalent of the partnership agreement--the operating agreement--does not even require two parties and need not be in writing.[16]

The flexible management and operating rules applicable to an LLC translate to a different conceptualization by the owner, who is no longer shackled with three or four statutorily significant legal rules that must be regarded to preserve the owner liability shield. Indeed, under the laws of some states, an LLC's failure to follow even these reduced formalities is not a ground for imposing liability on the members.[17] The conceptualization of the legal status of a solitary corporate shareholder and a single LLC member relative to the respective legal entities could not be more fundamentally different. Granted, for liability shield purposes, the single member is separate from the entity, but that separation is no more fundamental than is the tax law's disregard of the

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[14] Unif. Ltd. Liab. Co. Act section 201 (1996) and Rev. Unif. Ltd. Liab. Co. Act section 104(a) (2006). Both acts were drafted and approved by the National Conference of Commissioners on Uniform State Laws, a non-profit association charged with the study and review of state laws to determine which areas of the law should be uniform. Many states adopt some or all of the language used in these uniform acts when drafting or amending their state law.
[15] Unif. Ltd. Liab. Co. Act section 203(a)(6) (1996) and Rev. Unif. Ltd. Liab. Co. Act section 407(a) (2006).
[16] Rev. Unif. Ltd. Liab. Co. Act section 102(13) (2006).
[17] Rev. Unif. Ltd. Liab. Co. Act section 304(b) (2006).

SMLLC's entity status.

As a practical matter, for most SMLLCs owned by an individual, the tax "disregard" is by far the more frequent salient reality. While federal tax law treats a wholly owned corporation as a corporation, the famous "check the box" regulations treat an SMLLC as a sole proprietorship. An LLC with two or more members is treated as a partnership unless it elects to be classified as a corporation.[18] An SMLLC, like a sole proprietorship, is disregarded as an entity separate from its owner unless it elects to be classified as a corporation.[19] An SMLLC does not file a separate tax return from its owner, who is treated as directly owning the SMLLC assets.[20] Indeed, a merger involving an SMLLC owned by a corporation is treated as a merger between the parent corporation and the other merger target participant. It is as if the SMLLC simply does not exist.[21] While an S corporation owned entirely by another S corporation may also elect to be treated as a disregarded entity, the required corporate ownership significantly differentiates this form of disregarded entity from an SMLLC that may be, and usually is, owned by one individual.[22]

So, what happens when the income and expense of an SMLLC as reported by the owner is challenged? Assume the only owner pays the asserted tax liability and files a petition for refund in the applicable federal district court. Who is the proper party? Since the SMLLC is disregarded and the owner reports the SMLLC income and expense on his or her own form, presumably the individual owner would be the proper party. The owner can certainly appear pro se because he or she is not technically representing the SMLLC. The same would be true in a civil or criminal case.[23] But is this reed too slender? How many individual SMLLC owners will adequately appreciate these fine distinctions?

The matter becomes further complicated when considering the liability for employment taxes related to an SMLLC's employees.[24] Federal tax regulations clarified earlier confusion by declaring that an SMLLC with employees is not treated as a disregarded entity for purposes of employment taxes. The entity, and not its owner, is liable for employment taxes on its employees.[25] The sole owner is personally liable, if at all, only as a responsible person.[26] This dual liability on different basis could mean that both the SMLLC and its owner might be involved in federal refund litigation to determine liability for employment taxes. The owner would be per- mitted to appear personally and without a lawyer to argue the responsible person liability, but under *Hagerman* he or she would be precluded from appearing pro se to also represent the SMLLC to challenge the base liability itself.[27] To further complicate matters, the owner could assert standing to contest the

[18] Regs. 301.7701-3(b)(1)(i).
[19] Regs. 301.7701-3(b)(1)(ii).
[20] See Reg. 301.7701-2(a) (If the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner) and Section 1361(b)(3)(A)(i).
[21] Bishop and Kleinberger, Limited Liability Companies: Tax & Business Law (WG&L 2009-1 Supp.), ¶12.11A.
[22] Section 1361(b)(3)(B)(1).
[23] 28 U.S.C. section 1654 (civil) and Faretta v. California, 422 U.S. 806 (1975) (criminal).
[24] Temp. Reg. 301.7701-2T(c)(2)(iii).
[25] Reg. 301.7701-2(c)(2)(iv).
[26] See Section 6672 and discussion in Bishop and Kleinberger, supra note 21 at 2.07[1][a][ii], 6.
[27] In order to prevent such anomalies, some states have adopted statutes expressly permitting the owner to represent an SMLLC in state court. See, e.g., Colo. Rev. Stat. §13-1-127(2). In addition, the United States Tax Court has adopted a similar rule. Tax Ct. Rule. 24(b).

SMLLC's liability merely for purposes of challenging the government's claim against the owner.

The Eye of the Storm

The eye of the storm in this controversy is *Hagerman*, a Seventh Circuit case. As explained above, that case dismissed the appeal of an SMLLC because the only member represented the LLC, and he was not a lawyer.[28] As this was a case of first impression, the Seventh Circuit opinion was not as caustic as it was in *Belleville Catering* because, noted the court, "we have not had occasion to rule on whether, like a corporation, an LLC can litigate only if represented by a lawyer."[29] The Seventh Circuit followed an earlier Second Circuit *per curiam* opinion also denying the only member of an SMLLC the right of to appear pro se for the entity when the member was not a lawyer.[30] According to the Seventh Circuit, the right to appear pro se now depends on whether the business is a sole proprietorship.[31] If so, the answer to the "pro se" question is yes. In contrast, if the person operates a business in partnership, corporate, or LLC form, the answer is no, even if the LLC is an SMLLC, a feature not analyzed by the Seventh Circuit.

As with our earlier article concerning federal diversity jurisdiction, here we draw attention to the federal courts' imposition of different access conditions on some business litigants (partnerships, corporations, LLCs, and SMLLCs) but not on others (individuals and sole proprietorships). Do the benefits of the entity form emanating from a liability shield justify forcing the only owner of an SMLLC to hire an attorney to represent the entity in federal court? Yes, according to the Seventh Circuit.[32] Further, where the SMLLC and its owner are joint criminal defendants involving the same conduct, does it make sense to require the SMLLC to hire an attorney when the owner of that SMLLC may appear pro se in the same action and is jointly and severally liable for the criminal sanction?

Federal statutes address pro se representation, although the judiciary has reasonable discretion to interpret a vague statute. Did the Seventh Circuit have the requisite statutory ambiguity in this case? The answer is not perfectly clear because the SMLLC is still a comparatively new form, but the great weight of authority confines pro se representation to natural persons and re- quires all other business entities to obtain legal representation.

Unlike LLCs that trace their history to Wyoming in 1978, the SMLLC was not essentially viable until after the 1997 release of the check-the-box regulations.[33] Lawyers counseling clients forming an SMLLC must advise that the cost of litigating a federal question may often exceed the benefit and, if the client is not also a lawyer, the fix is not pro se representation on the theory of no harm (no damage), no foul (no client). Moreover, if another party to the litigation is an SMLLC not represented by legal counsel, a motion to dismiss is appropriate.

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[28] See supra note 6 at page 579.
[29] Id. at page 581.
[30] Lattanzio, see supra note 10.
[31] See supra note 6 at page 581.
[32] Id. at page 582.
[33] Bishop, "Reverse Piercing: A Single Member Paradox," 54 S.D. L. Rev. 199, 203 and 209 (Vol. 2, 2009).

Pro Se Representation and the Unauthorized Practice of Law

Federal diversity jurisdiction is defined through statute;[34] so is the right to appear pro se in federal courts in civil cases.[35] That right was extended to criminal cases,[36] but that is where the similarity ends. The diversity requirement pertains to a federal court's subject matter jurisdiction and, therefore, cannot be waived by the parties. Diversity can be challenged by any party and by the court itself at any time before final judgment (including during an appeal), but it is determined "upon the state of things at the time of the action brought."[37] Pro se representation is procedural, not jurisdictional, so the federal courts have more discretion interpreting pro se representation statutes than those involving jurisdiction.

The pro se statute is surprisingly sparse, stating only that "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."[38] A related doc- trine, stated in the Restatement (Third) of Law Governing Lawyers, provides that "a person not admitted to practice as a lawyer may not engage in the unauthorized practice of law, and a lawyer may not assist a person to do so."[39] Comment c recognizes that the definition of "unauthorized practice" is itself vague and various jurisdictions implement conflicting rules. Comment d specifically considers the dual concepts of pro se representation and unauthorized practice to conclude that since the right is personal, pro se representation does not involve unauthorized practice at all.

When the representation extends beyond a natural person to business entities, however, the matter becomes more complicated. Comment d provides "in general, however, a person appearing pro se cannot represent any other person or entity, no matter how close the degree of kinship, ownership, or other relationship." Indeed, the venerable rule that a corporation may not appear pro se without legal representation enjoys an ancient and illustrious history. Chief Justice John Marshall declared the rule nearly 200 years ago.[40] The rule was reiterated in a more modern Supreme Court case confining in *forma pauperis* proceedings to natural persons.[41]

Pro se representation and partnerships

The history of the partnership is less certain than the corporation, at least before *Rowland*. Some cases determined that a partnership is not like a corporation or other artificial entity. For example,

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[34] 28 U.S.C. section 1332.
[35] 28 U.S.C. section 1654.
[36] Faretta, see supra footnote 22.
[37] Mollan v. Torrance, 539 (1824).
[38] 28 U.S.C. section 1654. Circular 230 determines who may practice before the IRS. Section 10.7(a) of Circular 230 provides that an individual may appear on their own behalf. Where a SMLLC tax results appear on an individual's return, the individual is entitled to appear to challenge those results. Where the SMLLC itself is the taxpayer, as the case with employment taxes, it is unclear whether the owner may appear on behalf of the entity. Section 10.7(c)(1)(iv), however, provides that an "officer" of an "association" may appear on behalf of the association. See "Can An LLC Represent Itself Before the IRS?," 111 J. TAX 63 (July 2009).
[39] Restatement (Third) of Law Governing Lawyers, section 4.
[40] Osborn v. Bank of the United States, (1824) ("A corporation, it is true, can appear only by attorney, while a natural person may appear for himself.").
[41] Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194 (1993).

a partnership formed under the original Uniform Partnership Act is an entity for some purposes and an aggregate association of natural persons for other purposes. Relying on that concept, a Colorado court determined that any natural partner may appear pro se on their own account without engaging in the unauthorized practice of law.[42]

A later Colorado case declined to follow that decision, based on the intervening *Rowland* case.[43] Wedged between the two Colorado cases, *Rowland* supported the decision by stating that pro se cases were limited to natural persons.[44] The Supreme Court declared that only a "few aberrant cases" have allowed any artificial entity other than a corporation to appear pro se. The pro se rule does not allow "corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney."[45]

There were two "aberrant" cases referenced in *Rowland*, one involving a partnership and the other a corporation with one shareholder. In the partnership case, a non-lawyer partner was per- mitted to appear on behalf of a partnership.[46] In the corporate case, the non-lawyer sole shareholder was allowed to appear pro se on behalf of his corporation. *Rowland* rejected both cases and so Colorado reversed course on its partnership position.[47]

The Case For The Disregarded SMLLC?

After *Rowland*, there is little to suggest that a non-lawyer member may appear in federal court pro se on behalf of a multiple-member LLC. After *Hagerman*, there is little to suggest that a non-lawyer member may appear in federal court pro se on behalf of an SMLLC. Such an appearance would almost certainly involve the unauthorized practice of law.[48] Moreover, as demonstrated in *Belleville Catering*, a federal circuit court can become fussy if an issue returns contrary to a prior decision. Five years before *Belleville Catering*, the Seventh Circuit clearly stated "the citizenship of an LLC for purposes of the diversity jurisdiction is the citizenship of its members."[49] When the issue returned in *Belleville Catering*, the court was obviously less than pleased.

Nonetheless, the Seventh Circuit readily admitted that this was a case of first impression because it involved an LLC.[50] It also admitted that the only other authority dealing with the pro se representation of an SMLLC was the Second Circuit *Lattanzio per curiam* opinion.[51] Nevertheless, it is reasonable to expect that these cases will continue to appear in federal courts.

Why? Because unlike partnerships, which have two or more partners, and unlike a corporation with only one owner, an SMLLC is the only business entity that can be owned and operated by one natural person and be totally disregarded as an entity for federal tax purposes. An S corporation

[42] Watt, Tieder, Killian & Hoffar v. U.S. Fidelity & Guar. Co., 847 P.2d 170 (Colo.App., 1992).
[43] E & A Associates v. First Nat. Bank of Denver, 899 P.2d 243 (Colo. App., 1994).
[44] Rowland at page 202
[45] Id.
[46] Reeves, 431 F. 2d 1187 (CA-9, 1970) (per curiam).
[47] E & A Associates at page 245.
[48] Restatement (Third) of Law Governing Lawyers, section 4.
[49] Cosgrove v. Bartolotta, 150 F.3d 729 (CA-7, 1998).
[50] See supra note 6 at page 581.
[51] Id.

can be disregarded as a separate entity for federal tax purposes, but only when wholly owned by another S corporation and only when the parent files an election.[52] An SMLLC achieves disregarded status automatically regardless of whether the only member is a corporation.[53] The tax consequence of disregarded entity status is that an individual owner simply reports the operating results of the entity as part of his or her Schedule C income. Unlike a corporation, there are no formalities.[54]

The psychological significance is that the entity is truly transparent to the SMLLC owner. For all purposes other than a state law entity liability shield, the SMLLC does not exist at all and appears to the only owner as a sole proprietorship. Even for the entity shield itself, the SMLLC owner remains personally liable for any personal misconduct in tasks undertaken on behalf of the SMLLC. Thus, it is not surprising to find the Seventh Circuit expressing confusion on the issue. "There are many small corporations and corporation substitutes such as limited liability companies. But the right to conduct business in a form that confers privileges, such as the limited personal liability of the owners for tort or contract claims against the business, carries with it obligations one of which is to hire a lawyer if you want to sue or defend on behalf of the entity."[55] But just when things become clear the clouds begin to appear. "From that standpoint there is no difference between a corporation and a limited liability company, or indeed between either and a partnership, which although it does not provide its owners with limited liability, confers other privileges, relating primarily to ease of formation and dissolution. That is why the privilege of pro se representation is, as we noted, denied to partnerships too."[56]

The Seventh Circuit clearly understood the policy underpinning pro se representation of an SMLLC. An individual is permitted by statute to appear pro se in a "civil case in federal court because he might be unable to afford a lawyer, or a lawyer's fee might be too high relative to the stakes in the case to make litigation worthwhile other than on a pro se basis."[57] But perhaps the earlier Second Circuit *Lattanzio per curiam* opinion possessed a compelling precedential effect?

In *Lattanzio*, the court determined that an SMLLC could appear in federal court only through a licensed attorney, not its only owner. Lattanzio, not an attorney, was the sole member and executive director of Galen, an SMLLC. The original suit involved a suit for the refusal to accredit the SMLLC as a massage therapy school. Although Lattanzio was denied the opportunity to appeal, the SMLLC was permitted to appeal but could not be represented by Lattanzio, a non-lawyer, acting as its counsel.[58] The SMLLC appeal was denied without prejudice be- cause "a sole member limited liability company must be represented by counsel to appear in federal court."[59]

The court cited the policy burdens of pro se litigation in reaching its conclusion:

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[52] Section 1361(b)(3).
[53] Reg. 301.7701-3(b)(ii).
[54] See generally, Bishop and Kleinberger, supra note 21 at ¶ 2.07.
[55] See supra note 6 at 581-582.
[56] Id. at page 582.
[57] Id. at page 581.
[58] Lattanzio at page 139.
[59] Id.

> The conduct of litigation by a non-lawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, and 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.[60]

The Second Circuit noted that "because both a partnership and a corporation must appear through licensed counsel, and because a limited liability company is a hybrid of the partnership and corporate forms ... a limited liability company also may appear in federal court only through a licensed attorney. Other courts that have addressed this issue have reached similar conclusions."

Finally, the court failed to distinguish between multi-member and SMLLC status:

> "Further, we see no reason to distinguish between limited liability companies and sole member or solely owned limited liability companies. Although some courts allow sole proprietorships to proceed pro se ... a sole proprietorship has no legal existence apart from its owner ... Unlike a sole proprietorship, a sole member limited liability company is a distinct legal entity that is separate from its owner. For example, in Connecticut, a limited liability company has the power to sue or be sued in its own name."[61]

Lesson To Be Learned

Lattanzio and *Hagerman* are the only federal cases to consider whether a non-lawyer owner of an SMLLC may represent the entity pro se in a federal court civil case or criminal case. Lawyers who deal with SMLLCs must, therefore, learn the limited contours of SMLLC and LLC pro se litigation and the unauthorized practice of law. Those contours effectively relegate all federal LLC litigation involving a federal question to a lawyer. Those who appear against an SMLLC should likewise seek dismissal where the SMLLC is not represented by counsel.

Oddly, the rule is different in many state courts and the U.S. Tax Court, where special rules have been adopted to permit an authorized person, but not a lawyer, to represent the entity. In those cases, the entity can rely on the authorized person to prosecute the case, and that person may do so without concern about unauthorized practice of law. One might have hoped for such a nuanced approach from the U.S. circuit courts.

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[60] Id. This policy was reaffirmed in the Seventh Circuit: "pro se litigation is a burden on the judiciary." See supra note 6 at page 582.
[61] Lattanzio at page 140.