

State of Michigan

IN THE COURT OF APPEALS

Terry Monte Williams,

Plaintiff-Appellee,

COA No. 275819

v

Lower Ct/Tribunal No. 05-2931-CB
06-3021-CB

Norman Scott Edwards individually and as Trustee for Port Austin Sabbatarian Church
Community Sacred Purpose Trust,

Port Austin Sabbatarian Church Community Sacred Purpose Trust,

Defendants-Appellants.

ORAL ARGUMENT

REQUESTED

NOT REQUESTED

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

1. The Court of Appeals has Jurisdiction to grant leave to appeal an interlocutory order of a Circuit Court pursuant to MCR 7.203(B)(1) and MCR 2.116(J)(2)(a).

2. The Circuit Court order appealed was signed on January 8th, 2007 and included with the Application for Leave to Appeal made on January 29, 2007, pursuant to MCR 7.205(A).

3. On February 7, 2007, the Court of Appeals issued a request for a brief that conforms to MCR 7.212(C) within 21 days. This brief has been supplied in a timely manner in fulfillment of that request.

4. This case is appropriate for interlocutory appeal as it involves the basic right to due process—the right of a party to have representation at a trial currently scheduled for June 14, 2007.

STATEMENT OF QUESTIONS INVOLVED

(This list is repeated from the Initial Application for Leave to Appeal, with minor clarifications in wording, a restatement of question “g” to match the Trial Brief, and removal of question “h” from this Appeal.)

- a. Does Michigan law allow a trustee of a trust to represent that trust in Court?

Appellants answer: Yes

Appellee answers: No

Trial Court answered: No

- b. Do the Michigan Constitution and statutes allow for some degree of self-representation of all legal entities?

Appellants answer: Yes

Appellee answers: No

Trial Court answered: No

- c. If all the owners/directors of an entity represent that entity in court, are they violating Michigan statutes against the unauthorized practice of law?

Appellants answer: No

Appellee answers: Yes

Trial Court answered: Yes

- d. Are the cases that allow all the owners/directors of a closely held corporation to represent the corporation persuasive arguments for allowing all the trustees of a trust to represent that trust?

Appellants answer: Yes

Appellee answers: No

Trial Court did not answer

e. Are the Michigan cases that are commonly used for stating that corporations must be represented by licensed attorneys (*Peters v. Desnick* and *Detroit Bar Ass'n v Union Guardian Trust Co*) persuasive arguments for requiring all trusts to be represented by licensed attorneys?

Appellants answer: No

Appellee answers: Yes

Trial Court appeared to answer: Yes

f. Is the right of all entities to “fair and just treatment” in Article 1, Sec. 17 of the Michigan State Constitution infringed when an entity that cannot afford a lawyer is not allowed to represent itself?

Appellants answer: Yes

Appellee answers: No

Trial Court did not answer.

g. When a Sacred Purpose Trust is sued, can it avoid attorney representation of the beneficiaries because the legal right of litigation rests in the Trustees?

Appellants answer: Yes

Appellee probably answers: No

Trial Court did not answer

STATEMENT OF FACTS

These paragraphs correspond to Appellants' original Application for Leave to Appeal. Some additions and clarifications have been made to include all factual issues raised in Appellee's Answer. **Appellants assert that there are no significant controversies of fact, but that there are only questions of law to decide.**

1. Plaintiff-Appellee filed Complaint 05-2931-CB on October 21, 2005 and served Defendants-Appellants on November 10, 2005.

2. Defendants filed an Answer in Propria Persona to said complaint on December 1, 2005, and filed amended Answers and Motions, as well as represented themselves in the Pretrial Conference without Plaintiff objecting to Defendant Trust (Port Austin Sabbatarian Church Community Sacred Purpose Trust) being represented through its **sole Trustee**, Defendant Norman Scott Edwards. Plaintiff's Complaint does not seek to have Plaintiff named a Trustee of said Trust. Plaintiff-Appellee's Answer to Application for Leave to Appeal correctly mentioned that said Pretrial Conference contained discussion of the ability for Defendant Trust to be represented by its Trustee. Defendants-Appellants did not include said discussion because it was not utterly essential to the questions of law put forth, but the following relevant part is excerpted from the Partial Transcript of the June 22, 2006 Pretrial Conference, attached as Appendix "A":

MR. CUBITT: ...I have another issue that I want to raise, Your Honor, it's my understanding under Michigan law that a corporation cannot appear with an officer or an agent or whatever, it must represent – must be represented by an attorney.

THE COURT: That's correct.

MR. CUBITT: And so I'm wondering if that also shouldn't apply to a trust, I mean they're--.

THE COURT: I think you're probably right, but I don't know, why don't you bring that up by motion.

MR. CUBITT: All right. I raised the issue in my pretrial statement, I will file a motion.

THE COURT: Okay. I believe that – that an entity of that nature has to be represented by a member of the bar.

MR. CUBITT: So that would be – that would apply to the trust, Mr. Edwards obviously can represent himself if my belief is correct.

THE COURT: So let's bring that up by motion. Okay. So--

MR. CUBITT: And so I'm wondering if that also shouldn't apply to a trust, I mean they're--.

THE COURT: I think you're probably right, but I don't know, why don't you bring that up by motion.

Plaintiff-Appellee did not file any motion as recommended here by the Court.

3. Eternal Life Bible Institute, Inc., a Minnesota Corporation, herein "ELBI", the party selling a property to the Defendant Trust, was also named in the above Complaint but never served. After the time for service expired, a separate identical Complaint was filed by Plaintiff, file 06-3021-CB, on February 7, 2006 and served only on ELBI in Minnesota, on February 10, 2006. Defendant ELBI was dismissed as a result of their Motion for Summary Disposition heard August 29, 2006. Defendants-Appellants do not wish to appeal this point at this time, but include it as explanation of the two case file numbers, the absence of former-defendant ELBI, and to state that ELBI made no objection to Defendant PASCCSPT being represented through its sole Trustee.

4. Defendants-Appellants filed a Motion for Partial Summary Disposition on July 24, 2006, attached as Appendix "C", which was heard August 29, 2006. Plaintiff's did not raise the issue of trust representation in their written Answer to said motion, attached as Appendix "D". At the Hearing, Defendant PASCCSPT was not permitted by the Court to proceed, as

shown on line 12, page 3 of the August 29, 2006, Transcript, a portion of which is reproduced here:

THE COURT: You can't represent a trust, you understand, you can only represent yourself.

MR. EDWARDS: Um, I do have some case law, we came up with this issue last time.

THE COURT: You're not permitted to represent a trust, you can only represent yourself, that's my ruling. That's the law, you're not – you're not a lawyer, you're not licensed to practice law and you can't represent a trust. You can represent yourself, but you can't represent any other person or entity, and that's my ruling. That's the law of the case.

MR. EDWARDS: Okay.

THE COURT: And if you want an order to that effect and you want to take it up to the Court of Appeals, you may do so, but that's my ruling.

In his Answer to Application for Leave to Appeal, Plaintiff-Appellee admits to the facts in paragraph 4, but in paragraph 6 appears to raise the issue of whether Defendants **voluntarily** declined to proceed on their motion, stating that “Defendant Edwards, when advised by the Court that he could not represent the Trust, told the Court he did not wish to proceed on his Motion for Summary Disposition”. All of the relief sought by said motion was either exclusively for Defendant Trust or jointly for Defendants Trust and Edwards (see Appendix “C”), so the motion was not permitted to be argued. Page 4 of the January 8, 2007 transcript further demonstrates that the Defendant Trust was denied due process:

MR. EDWARDS: Okay. So what you're saying is today that because of the cases names, Norman Edwards, and then as trustee for the Port Austin Sabbatarian Church Community Sacred Purpose Trust, you're saying that I can only represent myself and cannot speak on behalf of the trust?

The COURT: Absolutely.

MR. EDWARDS: Okay. Yeah, I think I would like to appeal that.

[discussion of order omitted...]

MR. EDWARDS: Because I can't proceed with the motion then?

THE COURT: No, not if you're representing the trust, no.

5. Both Defendants and Plaintiff prepared orders for the Court's signature in regard to said hearing, but none were signed in a timely manner, either due to them being placed in the 06-3021-CB file, where only ELBI was served, or because of a pending motion on the correction of the trust name (see page 11 of the January 8, 2007 transcript).

6. On December 19, 2006, Defendants filed a Motion to Permit Trust Self-Representation accompanied by a 10-page brief, attached as Appendix "B", containing essentially the same legal arguments in this brief (though the new brief explains many points better, with some added cases and statutes, and one argument removed). The actual text of this motion was:

Whereas, Defendant Norman Scott Edwards, both individually and as Trustee, and Defendant Port Austin Sabbatarian Church Community Sacred Purpose Trust brought a Motion for Summary Judgment in this case before this Court on August 29, 2006;

Whereas, the transcript of said Motion Hearing states that the Motion was denied without prejudice because the trust must be represented by an attorney;

Whereas, as of this writing; no order has been entered in this case disposing of said Motion, to which Defendants may file a motion to reconsider or interlocutory appeal,

Therefore, Defendant respectfully requests that the Court consider the attached brief stating the legal basis whereby a Trust may represent itself through its Trustee(s), and issue an order permitting the Port Austin Sabbatarian Church Community Sacred Purpose Trust to represent itself through its Trustee(s) in this case.

Said Motion was heard January 8, 2007; a transcript of the hearing was served on the Court of Appeals and Parties on February 14, 2007. Page 3, lines 6-10 of said transcript show that the trial judge had read the brief and did not want it repeated. At this hearing, the Court signed the Order that is being appealed (attached with initial filing), originally prepared by Plaintiff for the August 29, 2007, Motion for Partial Summary Disposition. The order denies said Motion without prejudice stating that the Defendant Trust must be represented by counsel.

7. The Defendant Trust was denied self-representation through its sole Trustee without any statute or case being cited by the Court or by opposing counsel, either during the hearings or in counsel's response to the motion. An allusion was made to the statute against the unauthorized practice of law (MCL 600.916), but the statute was not specifically cited, nor the part of the statute in which Defendants were supposedly in violation. Plaintiff-Appellee avers that "the Court is not required to cite specific case law or statutes to make its ruling when the law is clear to the Court". This is a moot point as this appeal is not asking the Court of Appeals to decide the need to cite the law, but to rule on the questions of law presented.

8. MCR 7.201(B)(1) and MCR 2.116(J)(2)(a) provide jurisdiction to The Court of Appeals to grant leave to appeal an interlocutory order of a Circuit Court.

9. The Defendants-Appellants believe they will be greatly harmed if the Defendant Trust is:

- a. not able to solve matters that are clear from affidavits by filing a Motion for Partial Summary Disposition;
- b. not able to defend itself at trial, presently set for June 14, 2007;
- c. required to hire an attorney, for which it does not have the funds. (PASCCSPT had to borrow money to pay the filing fee for this Application.)

Both Defendants-Appellants now have virtually no liquid assets or ability to borrow further. Defendants believe on good information that many supporters of the Trust and its associated Church and Ministry are withholding support, awaiting the outcome of the trial. If the relief requested is not granted, it is likely that Defendant Trust will lose its real property and be unable to fulfill its religious mission for which a few God-fearing supporters have sacrificed their

time and resources to accomplish, and it is likely that Defendant Edwards will not receive a fair trial with the church Trust either unrepresented or represented by someone who does not understand it.

Plaintiff-Appellee did not disagree with the facts in this paragraph, but rejected it as irrelevant because “lack of money to hire an attorney is not a proper basis for an entity to have a non-lawyer represent the entity.”

ARGUMENT A:

STATEMENT OF ARGUMENT: The Trial Court erred in not permitting a trustee of an expressed trust to represent that trust in court.

Standards of Review: Questions of law regarding the interpretation and application of a statute are subject to de novo review by this Court, *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29 (2003).

Preservation of Error: August 29, 2006 Transcript, page 3, line 12ff; January 8, 2007 transcript, page 6 lines 18-25; Trial Brief (Appendix “B”), page 6.

The right of a trustee to appear in court to help preserve his trust should be understood from the Michigan Constitution and statutes. MCL 700.7401 enumerates powers of trustees in Michigan:

A trustee has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, use, and distribution of the trust property to accomplish the desired result of administering the trust legally and in the trust beneficiaries' best interest. (MCL 700.7401)

Article 1 § 13 and Article 1 § 17 of the Constitution of Michigan undisputedly give a person the rights to self-representation in Court and to protect their property. Notice that MCL 700.7401, *supra*, specifies “every act that a reasonable and prudent person would perform”. The word “every” does not give leeway for the courts to arbitrarily remove some acts, unless specifically removed by statute. It is the duty of the courts to sustain rather than destroy legislative enactments, if such result can be justly obtained. *People v. Lockhart*, 242 Mich. 491 (1928). Some of the duties of a Trustee are further enumerated by the legislature in MCL 700.7401(2):

To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties, even if the attorney is associated with the trustee, and to act without independent investigation upon the

attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment. [MCL 700.7401(2)(w)]

To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify a claim or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subsection for the trustee's protection in the performance of the trustee's duties. [MCL 700.7401(2)(x)]

To collect, pay, contest, settle, release, agree to indemnify against, compromise, or abandon a claim of or against the trust, including a claim against the trust by the trustee. [MCL 700.7401(2)(dd)]

The legislature gave the trustee an option to employ an attorney under subsection (2)(w) or carry out the actions himself in subsections (2)(x) and (2)(dd). The phrases “prosecute”, “defend”, “contest...a claim of or against the trust” have the meaning of participating in litigation. Furthermore MCL 700.7401(2) subsections (d), (dd), (ff), (gg), (hh), (ii) specifically allow the trustee to make contracting, conveyancing, and trust decisions—tasks that attorneys would typically perform for others. MCL 700.7401(2)(jj) allows the trustee “To execute and deliver an instrument that accomplishes or facilitates the exercise of a power vested in the trustee”, One might argue that all these functions require the trustee to hire an attorney to carry them out, but that is contrary to the clear intent and meaning of other parts of the statute. To further illustrate, MCL 700.7401(2)(v) allows the trustees to hire numerous professionals:

To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary. [MCL 700.7401(2)(v)]

But the trustee is not required to hire those professionals. Other subsections of MCL 700.7401(2) give him the right to do those things himself: banking (f) (q), real estate development (g) (i) (y), property repairs (h), investment decisions (l) (m) (n) (t) (z) (aa), insurance (p) (bb), and accounting (u). The courts have not held that a trustee needs to be a

licensed banker, real estate broker, building contractor, investment counselor, insurance agent, or accountant in order to perform those functions for a trust.

For example, a trustee may elect to do the accounting for a trust himself, or he may hire a licensed accountant who will probably do the work to a higher standard. As another example, if a pipe breaks on trust property, the trustee may hire a licensed professional who must repair the damage to lawful standards set by his profession, but the trustee may perform the repair to standards acceptable for an individual repairing his own property, i.e. “perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform”, supra.

Appellants were unable to find any Michigan cases that specifically considered the issue of the right of a trustee of a trust to appear in court on behalf of that trust. A reference to a Trustee representing trusts appears *In re Estate of Reeder*, 380 Mich. 655 (1968), citing *Detroit Trust Company v. Neubauer*, 325 Mich. 319, 335,336 (1949):

The rights of all interested in an estate who are under disability to represent themselves, and all interests of such a nature that those who will be the ultimate recipients may not be in being or cannot be ascertained, shall be protected by the court through the guardian ad litem. Such representation does not preclude, nor is it inconsistent with, further representation by a trustee, or by others having like interest with the one so represented. *In re Estate of Reeder*, 380 Mich. 655 (1968)

Lacking any cases to the contrary, it seems that that Michigan Statutes clearly authorize a the trustee of a trust to represent it in court. Whether or not such representation constitutes the unauthorized practice of law is covered in Argument C.

ARGUMENT B:

STATEMENT OF ARGUMENT: Constitution of Michigan Article I § 13 and Article I § 17 and MCL 450.681 specifically provide for entity self-representation, subject only to MCL 600.916, the statutes against the unauthorized practice of law.

Standards of Review: The determination whether a party has been denied due process of law is a legal question subject to de novo review. *Reed v Reed*, 265 Mich App 131 (2005). Questions of

law regarding the interpretation and application of a statute are subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29 (2003).

Preservation of Error: August 29, 2006 Transcript, page 3, line 12ff; January 8, 2007 transcript, page 4 lines 2-13 and page 6 lines 18-25; Trial Brief (Appendix “B”), page 6.

The Constitution of Michigan, Article I § 13 states:

A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

What is the meaning of “suitor” in this context? The Constitution continues with various court-related rights and three sections later states:

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed. (Article I § 17).

All of the entities described in Section 17 (supra) clearly qualify as the “suitor” in Section 13 (supra). “Individuals, firms, corporations and voluntary associations” all, equally, have the right to “fair and just treatment”. These four classes represent all types of entities that could appear in court:

individuals – flesh and blood people

firms – partnerships, sole proprietorships and other unincorporated business entities

corporations – profit or non-profit entities created by statute

voluntary associations – all other non-profit entities created by individuals

There are no statutes specifically addressing which of the following four entities can represent themselves, probably because the apparent meaning of the Constitution is that all can represent themselves. However, there are some statutes about which of the four types of entities can **be** an attorney, and those statutes tell us something about which entities the legislature

intended to be able to represent themselves. “Individuals” and “firms” (partnerships) have been historically accepted as attorneys, so there is no statute. But there is one in regard to “corporations” and “voluntary associations”, MCL 450.681:

It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself,...

Here the legislature states that any “corporation” or “voluntary association” cannot “appear as an attorney-at-law” or “make it a business to practice as an attorney-at-law” for any person **“other than itself”**.

When construing a statute, a court must give effect to every phrase, clause and word as far as possible; one part of a statute should not be construed to render another part unnecessary. Apparent inconsistencies should be reconciled if possible to arrive at a meaning which gives effect to all parts of the statute. *Gross v General Motors Corp*, 448 Mich. 147; (1995) “This Court must avoid a construction that would render any part of a statute surplusage or nugatory.” *People v Williams*, 268 Mich. App 416 (2005) citing *Bageris v Brandon Twp*, 264 Mich. App 156, 162; 691 NW2d 459 (2004).

The phrase “other than itself” would clearly be nugatory if corporations and voluntary associations were not allowed to appear in court on behalf of themselves.

There are statutes specifically governing the powers of corporations. None forbids them to represent themselves in court, but appointing individuals duties and assigning them to appear in court “in the same manner as natural persons” is clearly permissible according to MCL 450.1261, excerpted below:

A corporation, subject to any limitation provided in this act, in any other statute of this state, or in its articles of incorporation, shall have power in furtherance of its corporate purposes to do all of the following:...

(b) Sue and be sued in all courts and participate in actions and proceedings, judicial, administrative, arbitral, or otherwise, in the same manner as natural persons.

...

(d) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the business of the corporation, the conduct of its affairs, its rights and powers and the rights and powers of its shareholders, directors or officers.

(e) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify corporate directors, officers, employees, and agents.

While associations are not created by statute, there are some statutes allowing them to represent themselves in court in specific situations: MCL 460.8, the Michigan Public Service Commission Act 3 of 1939.

In *State Bar of Michigan v Galloway*, 422 Mich. 188 (1985), the Supreme Court reversed *Michigan Hospital Association v Michigan Employment Security Commission*, 123 Mich. App. 667 (1983) and decided that MCL 421.31 allowed individuals to be represented by non-attorneys in specific cases. A good example of statutory interpretation in the area is found in *State Bar of Michigan v Galloway* 422 Mich. 188 (1985)

All agree that “counsel” means an attorney. The phrase “or other authorized agent” would have no meaning if the Legislature did not intend to authorize representation by persons who are not attorneys. In construing a statute, we will make every effort to give meaning to every part of it and avoid rendering any part nugatory. *Melia v Employment Security Comm*, 346 Mich 544, 562; 78 NW2d 273 (1956). This statute is so plainly written that we have little need to refer to principles of statutory construction. [*State Bar of Michigan v Galloway*, 422 Mich. 188 (1985)]

The only statutes listed in *State Bar v Galloway* as possibly in conflict with MCL 421.31 are the one covered above, and MCL 600.916, covered in Argument “C”, below. The Court found no clear statute indicating that entities other than individuals must be represented by attorneys.

The arguments, above, relate directly to this Appeal. While trusts at law are often treated like individuals acting for the benefit of another, they are also sometimes treated as voluntary associations, *Inland American Yacht Club v Country Club of Detroit*, 258 Mich 423 (1932); *Lounsbury v Trustees of Square Lake Burial Association*, 170 Mich 645 (1912). In addition, trusts are also treated like corporations in an effort to deny them self-representation, as demonstrated by line 21, page 12 of the June 22, 2006 Transcript and Appellee's Answer.

ARGUMENT C:

STATEMENT OF ARGUMENT: The statute against the unauthorized practice of law, MCL 600.916, is not violated when all the owners/directors of an entity represent that entity in Court.

Standards of Review: Questions of law regarding the interpretation and application of a statute are subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29 (2003).

Preservation of Error: August 29, 2006 Transcript, page 3, line 18-19; January 8, 2007 transcript, page 4; Trial Brief (Appendix "B"), page 2-3.

The statute regarding the unauthorized practice of law is MCL 600.916:

A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state. A person who violates this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. [MCL 600.916(1)]

Since this statute imposes the penalty of the contempt statutes, it must be strictly construed in favor of the person penalized. *Washburn v Michailoff*, 240 Mich App 669 (2000).

The statute specifically forbids four things:

1. practice law—regularly engage in functions of attorneys

2. engage in the business of law—receive money specifically for legal work
3. lead others to believe they are authorized to do the above
4. represent oneself as attorney and counselor, attorney at law, or lawyer

“Practice” means “Repeated or customary action; habitual performance; a succession of acts of similar kind; custom; usage...” (Blacks Law Dictionary, 6th Ed.). When an existing trustee of a trust or an existing agent of some other entity represents that entity in court, they are not “practicing law” any more than an individual who represents himself in court—it is not a regular occurrence or “practice”. Neither an individual, trust, trustee nor any other entity that is not an attorney has any right to do the four things that the statute forbids:

There is apparently nothing in this statute, or any other statute, that specifically forbids a trust, corporation, partnership from appearing for itself through its existing trustees, officers, directors, etc. A person who would hire himself out to entities specifically to represent them in court is clearly “engaging in the business of law”, and anyone who moves from one entity to another, going to court for each of them is obviously “practicing law”. The legislature’s intended effect of MCL 600.916 (*supra*) will not be thwarted by allowing entities to represent themselves as provided by Article 1, § 13 of the Michigan Constitution.

The construction of a statute which would render the statute unconstitutional should be avoided whenever possible. *Silver Creek Drain District v Extrusions Division, Inc*, 468 Mich 367; (2003). The Supreme Court was careful to uphold Article 1, § 13 of the Michigan Constitution in *Dressel v Ameribank*, 468 Mich 557 (2003):

We agree and reiterate that a person⁶ [Footnote ⁶: As used in this opinion, "person" refers to any legal entity] engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge. (*Dressel v Ameribank*, 2003, 468 Mich 557, 566; 664 NW2d 151).

The statute is violated when any legal entity counsels or assists **another** in legal matters. The extra effort to note that a “person” can mean “any legal entity” in this statute allows any legal entity to use whatever legal discretion and knowledge it has for the benefit of itself.

If only one of multiple trust trustees appears in court on behalf of a trust, is he representing the non-appearing trustees and therefore engaging in the unauthorized practice of law? It would be difficult to call a single case “practice” in the sense required by MCL 600.916. It is also difficult to claim that this trustee “counsels or assists” the other trustees as the “practice of law” is formulated in *Dressel v Ameribank*, supra. Rather, this trustee is merely acting on behalf of the entity he represents.

But in the case where there is only one trustee of a trust, or if all trustees of a multiple-trustee trust all appear in court and sign all pleadings, it is extremely difficult to construe this as a violation of MCL 600.916 as it reads. This is the point specifically argued here, though it is certainly applicable to all types of entities, not just trusts.

The Michigan cases commonly cited requiring corporations to be represented by attorneys are discussed in Argument “E”; the idea that attorneys must represent trusts so that they can also represent the beneficiaries is covered by Argument “G”.

ARGUMENT D:

STATEMENT OF ARGUMENT: The Trial Court erred in not granting due process to Defendant Trust by stating that the law required all entities other than individuals had to be represented by attorneys, but without citing any authority, when Defendants-Appellants had provided persuasive arguments showing that a corporation, and by implication a trust, can be represented by all its owners/directors.

Standards of Review: The determination whether a party has been denied due process of law is a legal question subject to de novo review. *Reed v Reed*, 265 Mich App 131 (2005).

Preservation of Error: August 29, 2006 Transcript, page 3, lines 14-21; January 8, 2007 transcript, page 6, lines 10-17 and page 7 lines 20-24; Trial Brief (Appendix “B”), page 7-8.

Since the Trial Court’s stated reason for requiring a trust to be represented by an attorney was that all entities, like corporations, must be represented by attorneys, they should have acknowledged more persuasive arguments stated by Defendants-Appellants for allowing corporations to appear in court for themselves when all of their owners/directors are present. The fact these entities have been permitted to do it, and that fact that all trustees (1) of Defendant trust were present in Court, should be persuasive enough when combined with the facts, below. Furthermore, Article I § 23 of the Michigan Constitution specifically states that “The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.” Due process, guaranteed by Article I § 17, cannot be limited without a basis at law—if something is no clearly forbidden or infringing on another’s rights, it should be permitted.

The reference Corpus Juris Secundum gives a nationally recognized example of an entity representing itself in *U.S. v Priority Products, Inc.* 615 F.Supp. 593:

On September 21, 1984, the United States filed suit against Priority Products, Inc., Walter L. Huss, Rosalie E. Huss, and the merchandise in question....

In addition, when a corporation is the “alter ego” of an individual or is closely held, there is a narrow exception to the almost absolute rule requiring attorney representation of a corporation in litigation. Occasionally, the courts have held that a corporation may appear through an agent other than an attorney where the agent is a party to the action along with the corporation. Annot., 19 A.L.R.3d 1085 (1968). See *In re Holliday’s Tax Services, Inc.*, 417 F.Supp. 182, 183-4 (E.D.N.Y.1976); *J.C. Engleman, Inc. v. Briscoe*, 172 Ark. 1088, 1091, 291 S.W. 795, 798 (1927). This case falls within this narrow exception. This closely held corporation will be held to the pro se answer filed by its agents, who also were parties to the action.

Michigan's Justice Levin provides numerous examples of a corporation being represented by the individuals that control it in his dissenting opinion in *Shy v Metro Passbook, Inc*, Mich. 855 (1992):

Courts in other jurisdictions, while recognizing the general rule that a corporation may appear in court only by an attorney, have recognized an exception where a sole shareholder sought to represent the corporation. The courts reasoned that an individual has the right to represent a personal cause in court, and a sole shareholder representing the corporation is only representing such a cause.

Margaret Maunder Associates, Inc. v. A-Copy, Inc., 40 Conn.Supp. 361, 499 A.2d 1172 (1985), defendant moved for a nonsuit on the basis that a corporation cannot represent itself or act through a nonattorney. In denying the motion, the court said that the rules and standards governing the practice of law are for the protection of the public and not for the creation of a private advantage for attorneys. The court found that the representation of a corporation by its sole shareholder was not a threat to the public. The court also said that since the "practice of law" involves giving legal advice or rendering legal services to others, a sole shareholder representing the corporation is in effect acting personally.

Willapa Trading Co., Inc. v. Muscanto, Inc., 45 Wash.App. 779, 727 P.2d 687 (1986), the court held that the trial court did not abuse its discretion when it permitted Neil Wheeldon, the plaintiff's president, director, and sole shareholder, to appear on behalf of the plaintiff corporation.² The court said that in acting for the corporation, Wheeldon was acting on his own behalf.

Similarly, see *In re Holliday's Tax Services, Inc.*, 417 F.Supp. 182 (E.D.N.Y., 1976), where the sole shareholder of a corporation, a nonattorney, was permitted to appear on both his own behalf and on behalf of the corporation in bankruptcy court, and *Willheim v. Murchison*, 206 F.Supp. 733 (S.D.N.Y., 1962), where a shareholder of a corporation, a nonattorney, was permitted to appear on his own behalf and on behalf of the corporation in a shareholder derivative action....

I acknowledge that a person who is not an attorney is more likely than an attorney to burden other litigants and the court with time-consuming, meritless arguments and with time-consuming delays attributable to noncompliance with procedural requirements. But that is an argument against allowing persons who are not attorneys to appear at all, not for distinguishing between allowing a person who is not an attorney representation in propria persona, which is permitted, and allowing a person who is not an attorney to represent a corporation of which the person is the sole shareholder or has been held to be the alter ego. [*Shy v Metro Passbook, Inc*, Mich. 855 (1992)]

While the Court of Appeals upheld that Metro Passbook was unable to be represented by David Kersh, its “alter ego”, we must realize that if the arguments presented herein were presented in *Shy v Metro Passbook*, the results might have been much different.

Finally, there are group of Michigan cases in which three men, the principles of three corporations, were permitted to represent those corporations when all of them were present. The entire explanation of the opinions that were vacated and reinstated may be found in the very recently published *Tingley v Wardrop*, dated February 22, 2007, docket No. 243171. Excerpts of the informative opinion of *Tingley v Monroe, LLC*, 266 Mich. App. 233 (2005) are included below, even though the case was vacated, because it was vacated on other grounds and these points were never contested:

[page 233] William Q. Tingley, III (Tingley III), William Q. Tingley, and Daniel R. Bradley, as well as their businesses Proto-Cam, Inc.; Bend Tooling, Inc.; and Tennine Corporation, brought an action...

The Court of Appeals held:

2. Tingley III was not engaged in the unauthorized practice of law because all pleadings were signed by the three individual plaintiffs in propria persona, and the only documents and letters signed only by him were related only to him or were related to scheduling hearings or sending documents to the court or other clerical communication. He did not assist in matters that require the use of legal discretion and profound legal knowledge required in the practice of law by *Dressel v Ameribank*, 468 Mich 557, 566 (2003).

[page 247] Plaintiffs allege that they are corporate officers of Proto-Cam, Inc.; Bend Tooling, Inc.; and Tennine Corporation and are the “sole owners and operators” of the “Plaintiff’s Business” (the collective term used in the amended complaint to describe the corporate plaintiffs), but plaintiffs do not allege that they, as individuals, owned the property that defendants allegedly used without permission.

[page 250] See also MCL 600.2041 (stating that “a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action was brought”). Accordingly, the trial court improperly concluded that plaintiffs were not real parties in interest for the purposes of count three of the amended complaint.

[page 253] Accordingly, we conclude that the trial court erred by deciding that Tingley III was practicing law on behalf of Tingley and Bradley and by dismissing the amended complaint on that basis.

In the cases above, when all of the owners/directors of an entity are already present in the suit, there is no detriment to anyone if they represent that entity. Similarly, when the all of the trustees (1) are already present in Court, there is no detriment if the trustee represents the trust.

ARGUMENT E:

STATEMENT OF ARGUMENT: *Peters Production, Inc. v Desnick Broadcasting Co.*, 171 Mich App 283 (1988) and *Detroit Bar Ass'n v Union Guardian Trust Co*, 282 Mich 707, (1938) are the Michigan cases common precedents for state corporations being required to be represented by licensed attorneys, but they do not even have that issue at bar and they ultimately rely on cases from foreign states that have related statutes significantly different than Michigan's statutes and should not be applied to trusts.

Standards of Review: Questions of law regarding the interpretation and application of a statute are subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc.*, 468 Mich 29; (2003).

Preservation of Error: January 8, 2007 transcript, page 4; lines 16-23; Trial Brief (Appendix "B"), pages 5-6.

Peters Production, Inc. v Desnick Broadcasting Co., 171 Mich App 283 (1988) is the case that is frequently used to prove that corporations must be represented by licensed attorneys. It appears on the Michigan State Bar web site, www.michbar.org/professional/pdfs/Peters.pdf, in that capacity and is cited in other recent cases. However, a quick review of this case will show that both it and its underlying case are based on unsound arguments. The appellate court said:

We note that defendant was represented below and on appeal by Harvey L. Desnick, who is not a licensed attorney. An individual may appear in propria persona; a corporation, however, can appear only by attorney regardless of whether it is interested in its own corporate capacity or in a fiduciary capacity. *Detroit Bar Ass'n v Union Guardian Trust Co*, 282 Mich 707, 711; 281 NW 432 (1938). Therefore, this Court on its own motion strikes defendant's appellate brief from the record on appeal. MCR 7.212(H).

The single paragraph, above, is the entire basis for this far-reaching decision. The issue of who may appear for a corporation was not the subject of the appeal and no arguments were offered. The constitution, statutes, and cases cited in Arguments “A” through “C” of this brief were not considered. However, since *Peters v Desnick* uses only one citation, it is a simple matter to follow the trail of how this conclusion was reached.

The single cite in *Peters v. Desnick* is *Detroit Bar Ass’n v Union Guardian Trust Co*, 282 Mich 707 (1938), which is largely about the right of a corporate fiduciary to have its lay employees “draft probate papers and conduct probate court proceedings”. There was no question that these things were business functions—that they were done for others for a fee. Essentially, the case concluded that non-lawyer employees could perform some functions that require limited attorney knowledge, but that other functions, if performed by non-lawyers, would constitute the unauthorized practice of law. Only the middle of one large paragraph was devoted to the issue of whether or not a corporation could appear for itself:

It seems unnecessary to add that in any judicial proceeding with which the corporate fiduciary is concerned, in the probate court or any other court of record, it must be represented by a duly licensed attorney. This is conceded by appellee. While an individual may appear in propria personam, a corporation, because of the very fact of its being a corporation, can appear only by attorney regardless of whether it is interested in its own corporate capacity or in a fiduciary capacity. *Bennie v. Triangle Ranch Co.*, 73 Col. 586 (216 Pac. 718); *New Jersey Photo Engraving Co. v. Carl Schonert & Sons, Inc.*, 95 N.J. Eq. 12 (122 Atl. 307). A Layman is not authorized to practice law merely because he is an employee of a corporate fiduciary. *Detroit Bar Ass’n v Union Guardian Trust Co*, 282 Mich 707, 711; 281 NW 432 (1938).

Again, this is the entire justification for not allowing a corporation to represent itself in court. The sentence “This is conceded by appellee” shows that the appellee made no convincing arguments to the court on that issue. The beginning phrase “it seems unnecessary to add...” further shows this was not the subject of the case.

In addition, the two out-of-state cases cited by *Detroit Bar Ass'n v Union Guardian Trust Co*, supra, are contrary to Michigan law. The New Jersey case, included in full as Appendix “E” refers to a New Jersey statute that clearly limits appearances in court to one’s own cause and as a guardian or next friend.

The Practice act (Comp. Stat. p. 4055 § 16) provides that every person of full age and sound mind may prosecute or defend any action in any court in person or by his solicitor or attorney; and section 17 provides that no person except in his own cause or in the case of an infant shall be permitted to appear and prosecute or defend any action in any court unless he is a licensed attorney-at-law of the supreme court of this state who shall be under the direction of the court in which he acts. And this, of course, extends to any [page 15] interlocutory motion made to the court in a pending cause. And no one can appear for an infant except as next friend or guardian, as infants sue by next friend. *New Jersey Photo Engraving Co. v. Carl Schonert & Sons, Inc.*, 95 N.J. Eq. 12, 122 Atl. 307 (1923).

New Jersey’s reference to a person of “full age and sound mind” shows that the statute applies to an individual, not a corporation, trust or association. In New Jersey, **only individuals** and “next friends” can represent themselves—by statute. Similarly, the Colorado case cited also refers to a Colorado statute:

Our statute (5997 C.L.) provides that no person shall be permitted to practice as an attorney or counselor at law, or to commence, or conduct, or defend any action or suit in any court of record within this state, either by using or subscribing his name, or the name of any other person, without obtaining a license from at least four of the Justices of the Supreme Court. *Bennie v. Triangle Ranch Co.*, 73 Col. 586, 216 Pac. 718 (1923).

New Jersey and Colorado do not have the same constitutional and statutory provisions as the Michigan ones listed in Arguments “A” through “C” of this brief, so these cases should not have been applied to Michigan. The Michigan statutes are understandable without interpretation from other states, and the courts are not authorized to interpret them, as explained in *Paige v Sterling Heights*, 476 Mich 495 (2006):

Our fundamental obligation when interpreting statutes is “to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.” *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). If the statute is unambiguous, judicial construction is neither required nor permitted. In other

words, “[b]ecause the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute.” *Id.* [*Paige v Sterling Heights*, 476 Mich 495 (2006)]

Robinson v Detroit, 462 Mich 439 (2000) outlined the proper course of action when “governing decisions are unworkable or are badly reasoned”. The effects of overruling must be examined, especially as to whether they would work a hardship on anyone. The reality is that the number of entities that can and want to represent themselves in court is a miniscule amount compared to the total number of cases, and it will not work a hardship on anyone. The fact that *Detroit Bar Ass’n v Union Guardian Trust Co* (*supra*) has been cited for so long without challenge shows how few non-attorneys ever study this matter.

While the Court of Appeals may determine it does not have authority to immediately reverse *Peters v. Desnick* or *Detroit Bar Ass’n v Union Guardian Trust Co.*, it certainly is not required to and should not apply any of these unpersuasive-in-Michigan arguments to trusts.

ARGUMENT F:

STATEMENT OF ARGUMENT: The rights to “equal protection” and “due process” in Article 1 § 2 and Article 1 § 17 of the Constitution of Michigan preclude the courts from denying representation to any entity that cannot afford an attorney because it is the denial of a “fundamental right” and because the government has no “compelling interest” to insist that the entity go unrepresented.

Standards of Review: The determination whether a party has been denied due process of law is a legal question subject to de novo review. *Reed v Reed*, 265 Mich App 131 (2005).

Preservation of Error: January 8, 2007 transcript, page 8; lines 1-4; Trial Brief (Appendix “B”), pages 8-9.

This argument is not conditioned upon the previous arguments in this brief, but would certainly be enhanced by them.

The Defendant Trust was unable to find a pro bono attorney and unable to afford an attorney for this complex civil case. The only significant asset owned by the Defendant Trust is a

single piece of real property being purchased via land contract. Offerings received and private loans made to the Trust barely make its minimum mortgage payments and expenses. It has no credit established to obtain commercial loans. Paying an attorney from the assets of the trust to defend this case would almost certainly result in the sale of the Defendant Trust's real property, which would abrogate the religious purpose for which the trust was created.

Requiring that a trust or other entity be represented by an attorney is ostensibly for the benefit of those entities and the individuals associated with them. *State Bar v Cramer*, 399 Mich 116 (1976) a large case covering the unauthorized practice of law, explained it this way:

[page 134] "Laymen are excluded from law practice, whatever law practice may be, solely to protect the public." *Oregon State Bar v Security Escrows, Inc*, 233 Or 80, 87; 377 P2d 334, 338 (1962).

It is this purpose of public protection which must dictate the construction we put on the term "unauthorized practice of law".

There is no doubt that the unauthorized practice statute affects constitutional rights. It certainly affects the first amendment rights of defendant; it affects the right of privacy inherent in the marital relationship. *Roe v Wade*, 410 US 113, 152-153; 93 S Ct 705; 35 L Ed 2d 147 (1973); *Boddie v Connecticut*, 401 US 371; 91 S Ct 780; 28 L Ed 2d 113 (1971). It affects the litigants' right to self-representation. Const 1963, art 1 § 13.

Of course, the fact that the statute affects constitutional rights does not make it invalid. However, where a statute does impinge on constitutional rights, it must be "narrowly drawn to express only the legitimate state interests at stake". *Roe v Wade*, 410 US 113, 155; 93 S Ct 705; 35 L Ed 2d 147 (1973).

"The power of the states to control the practice of law cannot be exercised so as to abrogate federally protected rights." *Johnson v Avery*, 393 US 483, 490, fn 11; 89 S Ct 747; 21 L Ed 2d 718 (1969).

While the rights of an economically poor individual to represent himself are not contested, the rights of poor entities, including corporations and trusts are not yet clearly recognized. If a poor entity cannot afford an attorney, cannot find a pro bono attorney, and is not permitted to represent itself, it will have no representation at all. This is not the equal protection under the law and due process guaranteed in Article 1 § 2 and Article 1 § 17 of the Constitution of Michigan, and further guaranteed by the US Constitution, Amendments V and XIV.

If poor entities cannot represent themselves, any wealthy entity has the power to destroy any such poor entity by grievous torts which the poor entity cannot afford to rectify by suit. Alternatively, the wealthy entity can file a complex suit alleging facts that must be determined at trial and the poor entity will be unable to respond and try the case to defend itself, being easily extinguished by a default judgment. If anyone doubts that wealthy individuals make concerted efforts to oppress the poor in court, they need only look at the attempt of attorneys and insurance companies to completely eliminate the California Small Claims Courts in *Prudential Insurance Co. v. Small Claims Court*, 76 CA2d 379 (1946),

While MCL 600.916 does not on its face prevent entities from representing themselves, it has certainly been interpreted that way. However, it appears that the denial of rights occurring here is such that it would meet the rigorous test required to have statutes declared unconstitutional. The most stringent of the three categories used for these cases is where “strict scrutiny” is applied to the legislative item. For a decision to be subject to such scrutiny, it must be a classification that is based on “suspect” factors such as race, national origin, ethnicity, or a “fundamental right.” *Harvey v Michigan*, 469 Mich 1, 6-7 (2003). *Plyler v Doe*, 457 US 202, 216-217; 102 S Ct 2382; 72 L Ed 2d 786 (1982).

The “right to present a defense is basic in every lawsuit of every kind whatever.” *People v. Colling*, 16 Mich.App. 574. When poor entities are prevented from offering any defense, the test of a “fundamental right” is fulfilled.

For a State to interfere with such fundamental rights the courts require “the State to demonstrate that its classification has been precisely tailored” and it must “serve a compelling governmental interest.” *Plyler*, supra, at 216-217; *DeRose v DeRose*, 469 Mich 320, 353 (2003) (“narrowly tailored”). Again, we are not dealing with a statute, but an interpretation. The

interpretation that poor persons can represent themselves in court, but not poor trusts, associations and corporations seems neither “narrowly tailored” nor to serve a compelling governmental interest. There would be little work or expense on the Michigan government if it simply let the few entities that so desired represent themselves in court. There are a very small number of cases that would be affected by entity self-representation.

Someone might argue that there may be other individuals, not representing, but associated with these poor entities who would be best served by attorney representation. This is a straw-man argument and not likely to be a real issue for these reasons: Any arguments about other, non-representing individuals associated with these entities needing attorney representation seems moot for these reasons: 1) poor entities affect few other individuals—there will be very few non-represented people; 2) the alternative to entity self-representation is entity non-representation, almost everyone would be better off with some representation rather than none; and 3) if someone associated with the entity could afford an attorney, they could either supply the attorney for the entity, or hire the attorney to intervene in the case to represent their individual interests.

While the Court has the authority to overturn a statute that prevents equal protection and due process, all that is needed here is to interpret cases differently in the future, refusing to invoke MCL 600.916 when an entity attempts to represent itself because it cannot otherwise afford to do so. If, in this process, some individuals are discovered to be regularly “practicing law”, or “engaged in the law business”, they can be charged and punished with contempt of court as provided by said statute.

ARGUMENT G:

STATEMENT OF ARGUMENT: When a Sacred Purpose Trust is sued, it normally can avoid attorney representation of the beneficiaries because the legal right to litigation is vested in the Trustees.

Standards of Review: Questions of law regarding the interpretation and application of a statute are subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29 (2003).

Preservation of Error; Trial Brief (Appendix “B”), pages 1-2.

It is well established, by statute and cases, that the rights to litigation are vested in the trustees, not the beneficiaries:

Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity. MCL 555.16.

The separation of legal and equitable title is one of the distinctive features of the trust relationship. Legal title vests in the trustee to be held for the benefit of the beneficiary. *Stephens v Detroit Trust Co*, 284 Mich 149, 157-158; 278 NW 799 (1938). Thus, the beneficiary of a trust may not maintain an action at law against third persons where the trustee is entitled to do so. *Apollinari v. Johnson*, 104 Mich App 673 (1981):

As it is the trustee’s duty to represent the beneficiaries interests in financial, managerial and other capacities as prescribed by the trust instruments, it is also his duty to represent the beneficiaries legal interests. The courts have found it unreasonable to think that beneficiaries of trusts should all have legal representation. From *Detroit Trust Co. v. Neubauer*, 325 Mich 319 (1949):

“As was said in *American Bible Society v. Price*, 115 Ill 623 (5 NE 126): 'The title is in the trustees, and the duty is imposed upon them to protect and preserve this interest for whomsoever shall be ultimately entitled to it. They are parties to the suit, and they stand for and represent, in this litigation, the ownership ultimately entitled to this fund, and such ownership is bound by their representation.' *Green v. Grant*, 143 Ill 61 (32 NE 369, 18LRA 381); *Temple v. Scott*, 143Ill 290 (32 NE 366).”

The language above quoted by the Illinois court may, we think, be properly applied to the situation in the case at bar. It is the duty of the trustees under the will to protect the interests of all who are or may be beneficiaries under the trust provisions of the will. [*Detroit Trust Co. v. Neubauer*, 325 Mich 319 (1949):

In the case of defendant Trust, which is a Sacred Purpose Trust, the beneficiary is a religious purpose, not any specific individuals. There are multiple ministries using the property. Individuals using the property vary from those who live there permanently, to homeless transients spending a few months, to visiting worshipers. They come and go for a mixture of religious, personal and economic reasons. Many decisions are based on answers to prayer, not on administrative rules. A great amount of time and difficulty would be required for an attorney simply to determine who is using the Trust property and why, let alone represent their diverse and complex religious and secular interests.

As it is, all of the individuals using trust property are subject to the ecclesiastical governments in place as well as the Trustee(s) religious, managerial, financial and legal actions. If the Trustee of Defendant Trust had funds to hire an attorney, he would still have the prerogative to decide to hire the best attorney, hire the worst attorney, or to not defend the suit at all. Individuals using the property have a voice in ecclesiastical governments, but have no legal control over the management of the Trust, other than by initiating their own suit against the Trustee, MCL 555.16, MCL 555.26, MCL 700.1308 ff. Trusts have operated in this manner for hundreds of years, the key point being that a trustee must be someone who can be “trusted” to do effective work on behalf of others, not for himself.

7. The above facts should extinguish the concept that a Sacred Purpose Trust must be represented by an attorney in order to protect the beneficiaries. The trust relationship sets the beneficiaries at the mercy of the trustees, subject to the trust documents and the jurisdiction of the courts.

SUMMARY AND RELIEF REQUESTED

The Legislature should address the issue of securing to the people their constitutional right of self-representation as part of the large problem of providing legal service for persons of moderate circumstances. Head notes from Justice Levin, *State Bar v Cramer*, 399 Mich 116, (1976).

Over 30 years later, the Legislature has done some work, but still has much work to do. The courts cannot pass laws, but they can construe Michigan's laws to permit self-representation when the plain wording of statutes so indicates. They should especially avoid reliance on out-of-state cases when our statutes provide for self-representation much better than theirs. Will that make Michigan look more liberal than other states? Sure. Will attorneys be concerned? Probably so. But when one considers that most of the new entity-self-represented cases will actually be heard against an opposing paid lawyer, rather than defaulted, the amount of work for existing lawyers may actually increase. This Appeal is one example.

Certainly litigants in propria persona can slow down justice by not understanding its systems well. On the other hand, attorneys also know how to slow down justice when they want to—because they do understand the systems very well! Is there a concern that pro per litigants will outsmart the experienced attorneys and get unjust judgments in their favor? Probably not. Or is there a concern that they will get just judgments, but ones that upset the applecart of government, corporate, and attorney business as usual? This Appeal is one example.

Defendants-Appellants respectfully requests that the Court consider the arguments herein and make a decision with “freedom and justice for all”—not just for those who can afford it. The preamble to the constitution reminds us where all of our power came from:

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

The largest words in the middle of the Michigan Hall of Justice are even shorter and to the point: “In God We Trust”. If we do what is right for everyone, as opposed to what seems to be best for limited but powerful interests, we can trust God to take care of us.

The Defendants-Appellants hereby respectfully request that the Court of Appeals grant them Leave to Appeal the issues contained herein, and to provide temporary relief from the Circuit Court Order in one of the following ways:

1. provide a speedy resolution of this appeal by May 1, 2007 so Defendants-Appellants may be able to conduct their June 14, 2007 trial;
2. issue a temporary Order allowing the Port Austin Sabbatarian Church Community Sacred Purpose Trust representation through its sole Trustee, Norman Scott Edwards, until this appeal has been decided; or
3. issue a stay of the Circuit Court proceedings until this appeal has been decided.

Upon hearing this case, Defendants-Appellants hereby respectfully request the Court of Appeals vacate the Circuit Court order and publish an opinion concurring with as many Arguments of this brief as are lawful and just.

Date: February 28, 2007

By:

Norman Scott Edwards
PO Box 553
Port Austin, Michigan 48467-0553
989-738-7774

Norman Scott Edwards, Trustee
Port Austin Sabbatarian Church Community Sacred Purpose Trust
PO Box 553
Port Austin, Michigan 48467-0553
989-738-7774

LIST OF APPENDIXES:

- Appendix “A” Partial Transcript, pages 1-3 and 12-16 of the June 22, 2006 Pretrial Conference
- Appendix “B” Amended Brief on Trustee Appearing for Church Trust filed in the Trial Court with Motion to permit Trust Self-Representation on December 19, 2006
- Appendix “C” Defendants-Appellants’ Motion for Partial Summary Disposition Filed July 21, 2006 in the Trial Court
- Appendix “D” Plaintiff-Appellee’s Answer to Motion for Partial Summary Disposition Filed August 9th, 2006 in the Trial Court
- Appendix “E” New Jersey Photo Engraving Co. v. Carl Schonert & Sons, Inc., 95 N.J. Eq. 12 (122 Atl. 307)
- Appendix “F” Bennie v. Triangle Ranch Co., 73 Col. 586 (216 Pac. 718)