

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

FEDERAL ELECTION COMMISSION,

Plaintiff -Appellee,

v.

JODY L. NOVACEK, et al.,

Defendants-Appellants.

No. 10-10516

RESPONSE

**APPELLEE FEDERAL ELECTION COMMISSION'S
RESPONSE TO APPELLANT'S MOTION TO
REPRESENT CORPORATE ENTITIES**

The Federal Election Commission (“Commission”) files this response in opposition to Appellant Jody L. Novacek’s motion to represent certain corporate entities before this Court. Fifth Circuit precedent is dispositive on the question raised within Novacek’s motion. As a non-attorney, Novacek cannot represent the Republican Victory Committee, Inc., BPO, Inc., or BPO Advantage LP. “[T]he ‘clear’ rule is ‘that a corporation as a fictional legal person can only be represented by licensed counsel.’” *Donovan v. Road Rangers Country Junction, Inc.*, 736 F.2d 1004, 1005 (5th Cir. 1984) (quoting *K.M.A., Inc. v. General Motors Acceptance Corp.*, 652 F.2d 398, 399 (5th Cir.1982)); accord *Southwest Express Co. v. Interstate Commerce Comm’n*, 670 F.2d 53, 56 (5th Cir. 1982). The Supreme Court has consistently applied this long-standing rule, which “for the better part of

two centuries . . . [has required] that a corporation may appear in the federal courts only through licensed counsel.” *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 202-203 (1993); accord *Osborn v. Bank of United States*, 22 U.S. 738, 830 (1824) (“A corporation, it is true, can appear only by attorney, while a natural person may appear for himself”).¹

Requiring licensed counsel subject to legal knowledge requirements and standards of professional responsibility helps to insure the proper administration of justice. See *Strong Delivery Ministry Ass’n v. Bd. of Appeals of Cook County*, 543 F.2d 32, 33-34 (7th Cir. 1976); Fed. R. App. P. 46(a)-(c) (attorney admission requirements and disciplinary provisions). This Court has emphasized the importance “of the [c]enturies-old concept of a Court having a lawyer before it who has been qualified to practice, and who is subject to the Court’s control[.]” *Southwest Express Co.*, 670 F.2d at 55. These considerations are appropriate in this case. For example, Novacek has not provided a physical mailing address or

¹ Other circuits have uniformly applied this rule. See *In re Victor Publ’ers, Inc.*, 545 F.2d 285, 286 (1st Cir. 1976); *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983); *Simbraw, Inc. v. United States*, 367 F.2d 373, 374 (3d Cir. 1966); *Tamojira, Inc. v. Lubman*, 20 Fed. Appx. 133, 133-34 (4th Cir. 2001); *United States v. 9.19 Acres of Land*, 416 F.2d 1244, 1245 (6th Cir. 1969); *Strong Delivery Ministry Ass’n v. Bd. of Appeals of Cook County*, 543 F.2d 32, 34 (7th Cir. 1976); *Taylor v. Knapp*, 871 F.2d 803, 806 (9th Cir. 1989); *TAL v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2004); *Bristol Petroleum Corp. v. Harris*, 901 F.2d 165, 166 n.1 (D.C. Cir. 1990); *Richdel, Inc. v. Sunspool Corp.*, 699 F.2d 1366 (Fed Cir. 1983).

telephone number to opposing counsel, the district court, or this Court. *See FEC v. Novacek*, Civ. No. 09- 444, (N.D. Tex.) (Docket Nos. 17, 34, 37, showing mail undeliverable to Novacek and the corporate entities at 1221 Lakeridge Lane, Irving Texas); Appellant’s Mot. to Extended Deadline, No. 10-10516, at 2 (5th Cir. July 13, 2010). The nonworking Texas address on record with the district court and this Court has never been updated by Novacek.

Novacek argues that since the Republican Victory Committee, Inc., and the BPO entities “are mere pass-through, single member entities that are wholly owned and operated by Novacek” that she should be allowed to represent them before this Court. Appellant’s Mot. to Represent Corporate Entities, at 2 (Aug. 24, 2010) (citing FEC’s Mot. for Summ. J., Civ. No. 09-444, at 16 (N.D. Tex., Nov. 30, 2009)).² However, Novacek’s argument only speaks to whether she observed corporate formalities on behalf of the corporations in the past and does not constitute a reason for this Court to depart from long-standing precedent. The legal benefits of corporate status come along with responsibilities that corporations observe certain formalities, which include appearing through counsel before the

² Although the Commission sought below to hold the defendants jointly and severally liable for the violations because “Novacek was solely responsible for RVC and BPO” and to “facilitate collection of the penalty”(*id.* at 19 n.5), the Commission did not question the corporate entities’ separate legal status. The Commission has consistently objected to the corporate defendants’ failure to appear through counsel. *Id.* at 16.

courts. *See generally* *TAL v. Hogan*, 453 F.3d 1244, 1255 (10th Cir. 2004). This Court has considered and rejected Novacek’s argument, explaining that the counsel requirement remains in force “even when the person seeking to represent the corporation is its president and major stockholder.” *K.M.A., Inc.*, 652 F.2d at 399 (citations omitted); *accord Southwest Express Co., Inc.*, 670 F.2d at 55 (appearance through non-lawyer “consistently rejected when raised”). This requirement is enforced “regardless of how close [the layperson’s] association [is] with the partnership or corporation.” *Id.* at 56.

CONCLUSION

For the foregoing reasons, the Commission requests that this Court deny appellant’s motion to represent corporate entities before this Court.

Respectfully submitted,

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s/ Greg J. Mueller
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September 3, 2010

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2010, I will cause the Appellee Federal Election Commission's Response to Appellant's Motion to Represent Corporate Entities to be filed electronically using the Court's CM/ECF system, which will then send a notification of such filing to any counsel or party using the system. I further certify that I caused the foregoing to be served by email on Defendant-Appellant Jody L. Novacek at: jodylnovacek@hotmail.com.

s/ Greg J. Mueller
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