

**BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE EQUALIZATION
APPEAL OF PIERSON INVESTMENTS, L.L.C.
FOR THE YEAR 2008
FROM JOHNSON COUNTY, KANSAS

Docket No. 2008-3974-EQ

ORDER ON MOTION TO DISMISS

Now the above-captioned matter comes on for consideration and decision by the Court of Tax Appeals of the State of Kansas. The County filed a Motion to Dismiss on June 16, 2008. On June 23, 2008, Mark A. Burghart, attorney, entered his appearance on behalf of the Taxpayer and filed a Response to the Motion. The County filed a Reply on July 16, 2008 and waived its appearance at oral arguments on July 23, 2008. The Court held oral arguments on the motion on July 23, 2008. The Taxpayer appeared by Mark A. Burghart, attorney.

After considering all of the arguments presented, the Court finds and concludes as follows:

The appeal application was signed by Bryan C. Neuendorf, a certified public accountant and partner with BKD, L.L.P. Mr. Neuendorf is a tax representative, not an attorney.

K.A.R. 94-2-3(a)(7) requires pleadings be signed by the party filing the pleading or the party's attorney. The party's attorney must be admitted to practice in the state of Kansas or duly licensed and admitted to practice in another state if associated with local counsel as required by Kansas Supreme Court Rule 116 relating to district courts. K.A.R. 94-2-3(a)(7). "Pleadings" are defined by K.A.R. 94-2-1(g) to include a notice of appeal, application, motion, brief, proposed findings of fact and conclusions of law, and other similar documents.

A non-attorney representative may not engage in the unauthorized practice of law. Therefore, a non-attorney tax representative may not sign pleadings, examine witnesses, make legal arguments or perform other functions deemed to be the practice of law. Att'y Gen. Op. No. 93-100.

The Court finds that the appeal application was not signed by an attorney admitted to practice in the state of Kansas, and therefore, the pleading should be treated as unsigned. *See Architectural & Engineered Products Co., Inc. v. Whitehead*, 19 Kan. App. 2d 378, 869 P.2d 766 (1994), *rev. denied* 255 Kan. 1000 (1994).

K.S.A. 60-211(a) requires that every pleading, motion or other document of a party represented by an attorney be signed by at least one attorney of record in the attorney's individual name, and the attorney's address and telephone number be stated. A pleading, motion or other document of a party who is not represented by an attorney must be signed by the party and state the party's address. *See also* K.A.R. 94-2-3.

K.S.A. 60-211(c) provides that:

“If a pleading, motion or other paper provided for by this article is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper provided for by this article is signed in violation of this section, the court, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed it or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees. A motion for sanctions under this section may be served and filed at any time during the pendency of the action but not later than 10 days after the entry of judgment.”

The Kansas Court of Appeals in *Architectural & Engineered Products Co.* explained that K.S.A. 1993 Supp. 60-211 was modeled after Rule 11 of the Federal Rules of Civil Procedure and noted that:

“In *Edwards v. Groner*, 116 F.R.D. 578 (D.V.I. 1987), a pleading was signed by the plaintiff's lawyer's wife, who was not an attorney. Defendants moved to dismiss the complaint because it was not signed by an attorney. The federal district court stated: ‘A bungled signature on a pleading is merely a technical defect and not a

substantive violation of Rule 11, warranting the voiding of the complaint. [Citations omitted.] And technical defects are not grounds for dismissal.' 116 F.R.D at 579. Furthermore, the dismissal of a complaint without prejudice is warranted when an attorney fails to sign a complaint and fails to remedy the situation after receiving notice of the defect. *Hadlock v. Baechler*, 136 F.R.D. 157 (W.D.Ark.1991)." *Id.* at 769.

This Court finds that that the Taxpayer must be provided an opportunity to correct the defect. The defect should be corrected promptly after receiving notice of the defect. Dismissal of the appeal is not the appropriate sanction without first providing the party an opportunity to promptly correct the defect. *See Architectural & Engineered Products Co.*

Non-attorney tax representatives who wish to participate in proceedings before this Court must understand that all pleadings, whether filed in the regular division or the small claims and expedited hearings division, must be signed either by the party or by the party's attorney.

IT IS THEREFORE ORDERED that, for the reasons stated above, the County's Motion to Dismiss is denied and the Taxpayer is hereby provided an opportunity to promptly correct the defect.

IT IS SO ORDERED

THE COURT OF TAX APPEALS

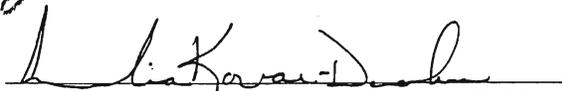



REBECCA W. CROTTY, CHIEF JUDGE


FRED KUBIK, JUDGE


BRUCE F. LARKIN, JUDGE


JOELENE R. ALLEN, SECRETARY


AMELIA KOVAR-DONOHUE, ATTORNEY

CERTIFICATION

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket No. 2008-3974-EQ and any attachments thereto, was placed in the United States Mail, on this 15th day of August, 2008, addressed to:

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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joelene R. Allen, Secretary