



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
*Attorney General*

November 2, 1976

ATTORNEY GENERAL OPINION NO. 76- 334

Mr. Michael G. Patton  
Lyon County Attorney  
Lyon County Courthouse  
Emporia, Kansas 66801

Re: Courts--Small Claims Procedure Act--Attorneys

Synopsis: An attorney at law may appear and prosecute or defend a claim in his or her own behalf under the Small Claims Procedure Act, K.S.A. 1975 Supp. 61-2701, for in doing so, such person does not act as an attorney, *i.e.*, as a representative or agent of another person.

\* \* \*

Dear Mr. Patton:

You request my opinion whether attorneys are permitted to appear as parties plaintiff, *i.e.*, in their own behalf, in actions under the Small Claims Procedure Act, K.S.A. 1975 Supp. 61-2701 *et seq.*

K.S.A. 1975 Supp. 61-2707(a) states that "no party in any such action shall be represented by an attorney prior to judgment." This Act was passed by the Legislature in an effort to eliminate the costs and delays which had discouraged poor litigants from seeking judicial redress of relatively small claims. The cost of employing an attorney is, in many such instances, greater than the claimant can afford or than the claim will justify. The prohibition against representation by an attorney was designed, at least in part, to reduce the advantage of the more prosperous litigant, who could afford counsel, over the poor untrained party who could not. Simplification of pleadings, the \$300 limit on claims, elimination of jury trials and discovery proceedings and

Mr. Michael G. Patton  
Page Two  
November 2, 1976

the provision that no party shall be represented by counsel are all features of the act designed to place the parties on a relatively equal footing.

The Act cannot, of course, eliminate every inherent advantage which one party may have over another. In the nature of things, one party may have superior education and ability to present effectively his or her claim or defense. The act was designed to equalize, so far as possible, the advantage of one party over another based on wealth, including the advantage of resources with which to employ counsel. When one party who is an attorney prosecutes a claim under the Small Claims Procedure Act in his or her own behalf, that party has no advantage over the other save that of education and training. The opposing party is at no competitive disadvantage in the presentation of a defense under the act merely by virtue of the superior economic resources of the plaintiff, in such cases.

Virtually by definition, an attorney is one who is appointed and designated by another to act for such other person in the conduct of his or her affairs. Likewise, by definition, an attorney at law is one who is designated by another to act for such other person in the conduct of his or her legal affairs. *Fletcher v. Board of Education*, 323 Mich. 343, 35 N.W.2d 177 (1948). When an individual prosecutes a claim under the Small Claims Procedure Act in his or her own behalf, and not through counsel, the claimant represents only himself or herself, and is not represented by an attorney at law, for the claimant does not appear as an attorney, *i.e.*, as one representing another.

Thus, in my opinion, an individual who is an attorney at law may appear and prosecute a claim in his or her own behalf pursuant to the Small Claims Procedure Act, K.S.A. 1975 Supp. 61-2701 *et seq.*, and when a person who is an attorney at law does so, such person does not appear as an attorney, *i.e.*, as a representative of another, but in his or her own behalf.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj