

**LYNN WALTERS**

*Appellant,*

v.

**Secretary, DEPARTMENT OF CORRECTIONS**

*Respondent.*

Case No. 02-0014-PC

**RULING ON MOTION  
TO EXCLUDE APPELLANT'S REPRESENTATIVE**

This matter is before the Commission on Respondent's motion to exclude appellant's representative. Both parties have filed briefs. The following facts appear to be undisputed, and are made solely for the purpose of deciding this motion.

**FINDINGS OF FACT**

1. The appellant in this matter is represented by Daniel W Linehan.
2. Linehan is not licensed to practice law in this state.
3. Linehan had previously been licensed to practice law in this state, and his license was revoked effective November 1, 1989. *In the Matter of Disciplinary Proceedings Against Linehan*, 151 Wis. 2d 797, 446 N. W 2d 450 (1989).
4. Linehan filed a notice of appearance on April 17, 2002, in which he stated he was a "paralegal." Linehan states that he used the term "paralegal" to make it clear he was not appearing as an attorney, since he previously had been an attorney, and that his intention was not to convey that he was a paralegal, but more to convey that he was not an attorney. Linehan affidavit dated May 20, 2002.
5. Linehan called respondent's attorney on April 22, 2002, and told her he wanted to conduct discovery<sup>1</sup> in this case, and he wanted to review the Department of Corrections' files regarding this matter

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<sup>1</sup> The Commission rules provide at s. PC 4.03, Wis. Adm. Code, that parties may conduct discovery in the manner provided by ch. 804, Stats.

5. Linehan is representing appellant, a personal friend, without remuneration.

### OPINION

Section PC 1.04(1), Wis. Adm. Code, provides:

A party is entitled to appear in person or by or with the party's representative in any case before the commission *except as otherwise prohibited by law*. The representative shall be presumed to have full authority to act on behalf of the party, including the authority to file or withdraw a case. (emphasis added)

Section PC 1.02(18), Wis. Adm. Code, provides as follows:

"Representative" means an attorney or other agent of a party who has been authorized by the party to provide representation before the commission, *where authorized by law*. (emphasis added)

These rules provide wide latitude for representation before this Commission, with the proviso that representation which is otherwise unlawful is not allowed.

Section 757.30(1), Stats., provides in relevant part as follows:

Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of (2) . . . shall be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

Since Linehan does not have a license to practice law as an attorney, his representation of complainant is in violation of this statute if such representation constitutes the "practice [of] law within the meaning of [s. 757.30(2)]." *Id.* It further follows that if Linehan is practicing without a license in violation of s. 757.30, Stats., this representation *would not be* "authorized by law" under s. PC 1.02(18), Wis. Adm. Code, and *would be* "otherwise prohibited by law" under s. PC 1.04(1).

Section 757.30(2), Stats., provides in relevant part as follows:

Every person who appears as agent, representative or attorney, for or on behalf of any other person in any action or proceeding before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or *who otherwise, in or out of court, for*

*compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person* shall be deemed to be practicing law within the meaning of this section. (emphasis added)

Since Linehan is not receiving any remuneration for his services, his representation is not covered by s. 757.30, Stats.<sup>2</sup>

Wisconsin Supreme Court Rule SCR 22.26(2) provides:

An attorney whose license to practice law is suspended or revoked or who is suspended from the practice of law may not engage in this state in the practice of law or in any law work activity customarily done by law students, law clerks, or other paralegal personnel, except that the attorney may engage in law related work in this state for a commercial employer itself not engaged in the practice of law.

If this rule applies to Linehan's activities, his activities would be "prohibited by law," s. PC 1.04(1), Wis. Adm. Code, and not "authorized by law," s. PC 1.02(18), Wis. Adm. Code.

Linehan first argues that the "assistance being provided by appellant's representative is not covered by the categories contained within the [rules]." Appellant's brief, p. 2. In *State ex rel. State Bar of Wisconsin v. Keller*, 16 Wis. 2d 377, 387-88, 114 N. W. 2d 796 (1962); *vacated other grounds, Keller v. Wisconsin ex rel. State Bar of Wisconsin*, 374 U. S. 102, 83 S. Ct. 1686, 10 L. Ed. 2d 1026, 1963 U. S. LEXIS 1280 (1963), the Court applied this provision (then s. 256.30(2), Stats.), and held it included activities before administrative agencies, and that the practice of law included giving legal advice to clients to inform them of their rights and obligations, preparing documents for clients requiring knowledge of legal principles not possessed by ordinary laypersons, and "the appearance for clients before public tribunals which possess power and authority to determine the rights of such clients according to law, in order to assist

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<sup>2</sup> Complainant also contends that s. 757.30(2) does not apply because "the Personnel Commission is a quasi-judicial agency, and is therefore not included." Appellant's brief, p. 2. This ignores the clause "or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice or renders any legal service for any other person" See *Sathasivam v. DOC*, 01-0119-PC-ER, 7/31/02.

in the proper interpretation and enforcement of the law.” The Commission does not see how a person can represent a party before this agency without being involved in these activities. *See, e. g.*, s. PC 1.04(1), Wis. Adm. Code: “The representative shall be presumed to have full authority to act on behalf of the party, including the authority to file or withdraw a case;” s. PC 1.05(4): “When a party is represented by a representative, service shall be made upon that representative.”

Linehan also argues as follows:


Second, the Supreme Court rules are for the regulation of attorneys, and do not apply to lay people. The Supreme Court rules are only intended to apply for the discipline of attorneys, regulation of their trust accounts, and other matters related to **attorneys**. The scope of the Supreme Court Rules do not apply to “non-attorneys” (former or otherwise), nor do they in any fashion attempt to regulate who may or may not appear before the Personnel Commission. SCR 22.26(s) is intended to discourage law firms or attorneys from hiring suspended or revoked attorneys to perform “law work activity.” SCR 22.26 gives the Supreme Court the authority to discipline a law firm or an attorney for engaging in such employment practices which does not apply to the facts here. Appellant’s brief, pp. 2-3.

However, the plain language of SCR 22.26 does apply to Linehan’s status, i. e. “An attorney whose license to practice law is        revoked        . may not engage in the practice of law        . . . .” As discussed above, anyone who represents a party before the Commission engages in the practice of law unless that representation is limited in ways that are not indicated in this case, and are not before the Commission. Furthermore, SCR 22.26 covers not only activities constituting the practice of law, but also “any law work activity customarily done by law students, law clerks or other paralegal personnel.” This would apply to Linehan’s representation in this case, even if he were not considered to be practicing law.

ORDER

Respondent's motion to exclude Daniel W Linehan as appellant' representative is granted and he is excluded as her representative.

Dated: Sept, 25, 2002. STATE PERSONNEL COMMISSION

  
ANTHONY J. THEODORE, Commissioner

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KELLI S. THOMPSON, Commissioner