

## **Considerations:**

### State Court:

New York State Civil Practice Law & Rules §321. Attorneys. (a) Appearance in person or by attorney. A party, [except an infant or incompetent], may prosecute or defend a civil action in person or by attorney, except that a corporation or voluntary association shall appear by attorney, except as otherwise provided in sections 1809 and 1809-A of the New York City civil court act, sections 1809 and 1809-A of the uniform district court act and sections 1809 and 1809-A of the uniform city court act, and except as otherwise provided in section 501 and section 1809 of the uniform justice court act. . . .

New York State Civil Practice Law & Rules §1025. Partnerships and unincorporated associations. Two or more persons conducting a business as a partnership may sue or be sued in the partnership name, and actions may be brought by or against the president or treasurer of an unincorporated association on behalf of the association in accordance with the provisions of the general associations law.

Single member LLCs are like sole proprietorships. They just have the limited liability protection. For this reason, a single member can represent the LLC in court, just as a sole proprietorship may represent him/herself.

### Federal Court:

The right to appear *pro se* in a civil case in federal court is contained in 28 U.S.C. §1654, which states that parties “may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”

However, representing another person or entity in court is the practice of law. To practice law, one must be an attorney. Thus, all federal courts follow the common law rule that corporations and partnerships appearing in court proceedings must be represented by an attorney.

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New York State Rules of Professional Conduct, which governs how a lawyer represents organizations/businesses:

#### RULE 1.13: Organization as client

(a) When a lawyer employed or retained by an organization is dealing with the organization’s directors, officers, employees, members, shareholders or other constituents, and it appears that the organization’s interests may differ from those of the constituents with whom the

lawyer is dealing, the lawyer shall explain that the lawyer is the lawyer for the organization and not for any of the constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action or intends to act or refuses to act in a matter related to the representation that (i) is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization, and (ii) is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include, among others: (1) asking reconsideration of the matter; (2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority in the organization; and (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly in violation of law and is likely to result in a substantial injury to the organization, the lawyer may reveal confidential information only if permitted by Rule 1.6, and may resign in accordance with Rule 1.16.

(d) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the concurrent representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.