177 So.3d 941
Supreme Court of Florida.

The FLORIDA BAR re ADVISORY OPINION—ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS.

No. SC13–889.
|
May 14, 2015.

Synopsis

Background: Real Property, Probate, and Trust Law Section of state bar association petitioned for an advisory opinion regarding whether certain activities were the **unlicensed practice of law** when performed by non-lawyer community association managers.

Holdings: The Supreme Court held that:

[1] non-lawyer managers who prepare certificates of assessments are not engaged in **unlicensed practice of law**;

[2] non-lawyer managers' preparation of pre-arbitration demand letters prior to filing a court action does not constitute **unlicensed practice of law**;

[3] non-lawyer managers' preparation of construction **lien** documents would constitute **unlicensed practice of law**;

[4] non-lawyer managers' preparation of construction, management, or cable television contracts constitutes **unlicensed practice of law**; and

[5] non-lawyer managers' engaging in activity requiring statutory or case law analysis to reach a legal conclusion would constitute **unlicensed practice of law**.

Ordered accordingly; rehearing denied.

Opinion 164 So.3d 650withdrawn and republished.

West Headnotes (11)

[1] **Attorney and Client**
Drafting or preparation of documents in general

Non-lawyer community association managers who prepare certificates of assessments are engaged in ministerial acts, and, thus, are not engaged in the **unlicensed practice of law**.

Cases that cite this headnote

[2] **Attorney and Client**
Drafting or preparation of documents in general

Non-lawyer preparation of amendments, and certificates of amendment that are to be recorded in official records, to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members would constitute the **unlicensed practice of law**.

Cases that cite this headnote

[3] **Attorney and Client**
What Constitutes **Practice of Law**: Prohibited and Permitted Acts

If the determination of the number of days to be provided for statutory notice requires the interpretation of statutes, administrative rules, governing documents, or rules of civil procedure, then it would constitute the **unlicensed practice of law** for a non-lawyer community association manager to engage in this activity.

Cases that cite this headnote

[4] **Attorney and Client**
Drafting or preparation of documents in

general

Non-lawyer community association managers may modify proxy forms that involve ministerial matters without engaging in the **unlicensed practice of law**, if the questions do not require any discretion in the phrasing; but, if the questions require discretion in the phrasing or involve the interpretation of statutes or legal documents, the managers would engage in the **unlicensed practice of law** if they modified the question.

Cases that cite this headnote

[5] **Attorney and Client**
Drafting or preparation of documents in general

Non-lawyer community association managers who prepare documents concerning the right of the association to approve new prospective owners engage in the **unlicensed practice of law**, if the preparation requires the exercise of discretion or the interpretation of statutes or legal documents.

Cases that cite this headnote

[6] **Attorney and Client**
What Constitutes **Practice of Law**; Prohibited and Permitted Acts

Determination by non-lawyer community association managers of the number of affirmative votes needed to pass a proposition or amendment to recorded documents or number of owners' votes needed to establish a quorum would constitute the **unlicensed practice of law** if the determinations require the interpretation and application of statutes and the association's governing documents.

Cases that cite this headnote

[7] **Attorney and Client**
Drafting or preparation of documents in general

Drafting by non-lawyer community association managers of pre-arbitration demand letters prior to filing an action in court does not constitute the **unlicensed practice of law**; statutory requirements are ministerial in nature, and do not appear to require significant legal expertise and interpretation or legal sophistication or training. West's F.S.A. § 718.1255.

Cases that cite this headnote

[8] **Attorney and Client**
Real estate; mortgages and **liens**; title insurance

Preparation of construction **lien** documents by a non-lawyer community association manager would constitute the **unlicensed practice of law**; a **lien** waiver would affect an association's legal rights, and construction **lien** law is a very complicated and technical area.

Cases that cite this headnote

[9] **Attorney and Client**
Drafting or preparation of documents in general

Preparation of construction, management, or cable television contracts by a non-lawyer community association manager constitutes **unlicensed practice of law**.

Cases that cite this headnote

[10] **Attorney and Client**
What Constitutes **Practice of Law**; Prohibited and Permitted Acts

If a non-lawyer community association manager is only searching the public records to identify who has owned the property over the years, then such review of the public records is ministerial in nature and not the **unlicensed practice of law**; but, if the manager uses the list and then makes the legal determination of who needs to receive a pre-**lien** letter, this would constitute the **unlicensed practice of law**.

Cases that cite this headnote

[11] **Attorney and Client**
⊕What Constitutes **Practice of Law**; Prohibited and Permitted Acts

It would constitute the **unlicensed practice of law** for a non-lawyer community association manager to engage in activity requiring statutory or case law analysis to reach a legal conclusion.

Cases that cite this headnote

Attorneys and Law Firms

***942** C.C. Abbott, Chair, Standing Committee on the **Unlicensed Practice of Law**, Tallahassee, FL; Nancy Munjiovi Blount, Past Chair, Standing Committee on the **Unlicensed Practice of Law**, Tallahassee, FL; John F. Harkness, Jr., Executive Director, Lori S. Holcomb, Director, Client Protection, and Jeffrey Todd Picker, The Florida Bar, Tallahassee, FL, On behalf of the Standing Committee on the **Unlicensed Practice of Law**.

Michael Allen Dribin, Chair, Real Property, Probate and Trust Law Section of The Florida Bar, Harper Meyer Perez Hagan O'Connor Albert & Dribin, LLP, Miami, FL; Margaret Ann Rolando, Past Chair, Real Property, Probate and Trust Law Section of The Florida Bar, Shutts & Bowen, LLP, Miami, FL; William F. Belcher, Saint Petersburg, FL, on behalf of the Real Property, Probate and Trust Law Section of The Florida Bar; Jennifer Ann Winegardner of The Chase Law Firm, Tallahassee, FL, on behalf of the Continental Group, Inc., Associations, Inc., and CEOMC Florida, Inc.; Mauri Ellis Peyton, II and Gian C. Ratnapala of PeytonBolin, PL, Fort Lauderdale, FL, on behalf of Community Associations Institute; David Mark Felice, Tampa, FL, on behalf of Terra Management Services, Inc.; Jeffrey Michael Oshinsky, Miami, FL, on behalf of Association Financial Services, L.C.; Mark R. Benson, Community Association ***943** Manager, Fort Myers, FL; and Steve Caballero, Community Association Manager, Fort Lauderdale, FL, on behalf of Exclusive Property Management, Responding.

PER CURIAM.

Pursuant to Rule Regulating the Florida Bar 10–9.1, The Florida Bar Real Property, Probate, and Trust Law Section petitioned the Standing Committee on **Unlicensed Practice of Law** (Standing Committee) for an advisory opinion regarding certain activities when performed by non-lawyer community association managers. Petitioner asked the Standing Committee to examine a 1996 advisory opinion from this Court, *Florida Bar re Advisory Opinion Activities of Community Association Managers,* 681 So.2d 1119 (Fla.1996), and advise whether the activities in the opinion that were found to be the **unlicensed practice of law** continue to constitute the **unlicensed practice of law**. Further, Petitioner asked whether fourteen additional activities, when performed by non-lawyer community association managers, constitute the **unlicensed practice of law**. As required under rule 10–9.1(f), the Standing Committee provided notice of and held a public hearing to address these issues where it considered written and live testimony. The Standing Committee subsequently filed a proposed advisory opinion in this Court. We have jurisdiction to review the proposed advisory opinion pursuant to rule 10–9.1(g) of the Rules Regulating the Florida Bar and article V, section 15, of the Florida Constitution.

After the proposed advisory opinion was filed, interested parties were permitted to file briefs in support of or in opposition to the proposed advisory opinion. After considering the proposed opinion and the briefs of the interested parties, the Court approves the proposed advisory opinion as set forth in the appendix to this opinion.[1]

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and PERRY, JJ., concur.

APPENDIX
THE FLORIDA BAR STANDING COMMITTEE ON THE **UNLICENSED PRACTICE OF LAW**

FAO # 2012–2, ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS

PROPOSED ADVISORY OPINION

May 15, 2013

INTRODUCTION

Pursuant to rule 10–9 of the Rules Regulating The Florida Bar, The Florida Bar's Real Property, Probate & Trust Law Section petitioned the Standing Committee on **Unlicensed Practice of Law** ("the Standing Committee") for an advisory opinion on the activities of community association managers ("CAMS").[2]

The petitioner sought confirmation that the activities found to be the **unlicensed practice of law** in the 1996 opinion (*Florida Bar re: Advisory Opinion Activities of Community Association Managers,* 681 So.2d 1119 (Fla.1996)) continue to be the **unlicensed practice of law**. Those activities (hereinafter *1996 opinion*) include the following:

***944** A. drafting of a claim of **lien** and satisfaction of claim of **lien**;

B. preparing a notice of commencement;

C. determining the timing, method, and form of giving notices of meetings;

D. determining the votes necessary for certain actions by community associations;

E. addressing questions asking for the application of a statute or rule; and

F. advising community associations whether a course of action is authorized by statute or rule.

The petitioner also asked if it was the **unlicensed practice of law** for a CAM to engage in any of the following activities (hereinafter "2012 request"):

1. Preparation of a Certificate of assessments due once the delinquent account is turned over to the association's lawyer;

2. Preparation of a Certificate of assessments due once a foreclosure against the unit has commenced;

3. Preparation of Certificate of assessments due once a member disputes in writing to the association the amount alleged as owed;

4. Drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;

5. Determination of number of days to be provided for statutory notice;

6. Modification of limited proxy forms promulgated by the State;

7. Preparation of documents concerning the right of the association to approve new prospective owners;

8. Determination of affirmative votes needed to pass a proposition or amendment to recorded documents;

9. Determination of owners' votes needed to establish a quorum;

10. Drafting of pre-arbitration demand letters required by 718.1255, Fla. Stat.;

11. Preparation of construction **lien** documents (e.g. notice of commencement, and **lien** waivers, etc.);

12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;

13. Identifying, through review of title instruments, the owners to receive pre-**lien** letters; and

14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

Pursuant to Rule 10–9.1(f) of the Rules Regulating The Florida Bar, public notice of the hearing was provided on The Florida Bar's website, in *The Florida Bar News,* and in the *Orlando Sentinel.* The Standing Committee held a public hearing on June 22, 2012.

Testifying on behalf of the petitioner was Steve Mezer, an attorney who is the chairman of the Condominium and

Planning Development Committee of the Real Property Probate and Trust Law Section of The Florida Bar, and attorney Scott Peterson. In addition to the petitioner, the Standing Committee received testimony from Mitchell Drimmer, a CAM; Jeffrey M. Oshinsky, General Counsel of Association Financial Services, a licensed collection agency; Andrew Fortin, Vice–President of Government Relations for Associa, a community management company; Kelley Moran, Vice–President of Rampart Properties and a CAM; Robert Freedman, an attorney; Erica White, prosecuting attorney for the Regulatory ***945** Council of Community Association Managers located within the Department of Business and Professional Regulation; Jane Cornett, an attorney; Tony Kalliche, Executive Vice–President and general counsel for the Continental Group, a community association management firm; David Felice, an attorney, a CAM, and owner of a community association management firm; Christopher Davies, an attorney; Brad van Rooyen, Executive Director of the Chief Executive Offices of Management Companies; Victoria Laney; Alan Garfinkel, an attorney; and Michael Gelfand, an attorney. There were also several individuals present to observe the hearing.

In addition to the testimony presented at the hearing, the Standing Committee received written testimony which has been filed with this Court. Included in the written testimony was a form petition that was submitted by hundreds of homeowner and condominium associations. As the petitions are substantially the same, only one has been filed with the Court as part of the written testimony. By and large the testimony reflects the belief that the previous guidance provided by the Court in its *1996 opinion* provides adequate guidance in this area and another opinion is not necessary. The testimony also reflected their concerns that too much regulation in this area will raise the cost of living in these communities and could potentially have a serious financial impact on community associations, property owners, and CAMS.

Background

CAMS are licensed through the Department of Business and Professional Regulation, Division of Professions, pursuant to Sections 468.431—468.438, Florida Statutes, and Florida Administrative Code chapters 61E14 and 61–20. (Written testimony of Dr. Anthony Spivey.) State law defines community association management as including the following activities: "controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association." Section 468.431(2), Florida Statutes (2012). There are over 18,500 individuals and over 1600 businesses licensed as CAMS in Florida. (Written testimony of J. Layne Smith.)

1996 Opinion

When the Court considered the activities of CAMS in 1996, it relied on *Sperry*[3] to determine what activity constitutes the **practice of law**:

> [I]n determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the **practice of law** it is safe to follow the rule that if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the **practice of law**.

Applying the test, the Court held that:

> [T]he **practice of law** also includes the giving of legal advice and counsel to ***946** others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.[4]

The Standing Committee and Court found that those activities that required the interpretation of statutes, administrative rules, community association governing documents or rules of civil procedure constituted the **practice of law**.[5] Drafting documents, even if form documents, which require a legal description of the property or which determine or establish legal rights are also the **practice of law**.[6] As the opinion noted, failure to complete or prepare these forms accurately could result in serious legal and financial harm to the property owner.[7] Thus, the Court found the following activities when performed by a CAM would constitute the **unlicensed practice of law**:

- completing BPR Form 33–032 (frequently asked questions and answers sheet);

- drafting a claim of **lien**, satisfaction of claim of **lien**, and notice of commencement form;

- determining the timing, method and form of giving notice of meetings;

- determining the votes necessary for certain actions which would entail interpretation of certain statutes and rules; and

- answering a community association's question about the application **of law** to a matter being considered or advising a community association that a course of action may not be authorized by law, rule, or the association's governing documents.

The Standing Committee and Court found that those activities that were ministerial in nature and did not require significant legal expertise and interpretation or legal sophistication or training did not constitute the **practice of law**.[8] The Court found that the following activities when performed by a CAM would not constitute the **unlicensed practice of law**:

- completion of two Secretary of State forms (change of registered agent or office for corporations, and annual corporation report),

- drafting certificates of assessments,

- drafting first and second notices of date of election,

- drafting ballots,

- drafting written notices of annual or board meetings,

- drafting annual meeting or board meeting agendas, and

- drafting affidavits of mailing.

The Standing Committee and Court found that other activities existed in a more grey area and whether or not they constituted the **unlicensed practice of law** would depend on the specific factual circumstances.[9] The Court found the following activities to be dependent on the specific circumstances:

- modification of limited proxy forms promulgated by the state

- drafting a limited proxy form, and

***947** • drafting documents required to exercise the community association's right of approval or right of first refusal on the sale or lease of a parcel

The Court found that modification of limited proxy forms promulgated by the State that involved ministerial matters could be performed by a CAM.[10] The Court found the following modifications to be ministerial matters:

- modifying the form to include the name of the community association;

- phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement;

- phrasing a yes or no voting question concerning carryover of excess membership expenses; and
- phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents.[11]

For more complicated modifications, the Court found that an attorney must be consulted.

Regarding the drafting of a limited proxy form, the Court found that those items which were ministerial in nature, such as filling in the name and address of the owner, do not constitute the **practice of law**. But if drafting of an actual limited proxy form or questions in addition to those on the preprinted form is required, the CAM should consult with an attorney.[12]

The Court also found that the drafting of documents required to exercise a community association's right of approval or first refusal to a sale or lease may require the assistance of an attorney, since there could be legal consequences to the decision.[13] Although CAMS may be able to draft the documents, they cannot advise the association as to the legal consequences of taking a certain course of action.[14]

It is the opinion of the Standing Committee that no changes are needed to the *1996 opinion* and those activities found to be the **unlicensed practice of law** continue to be the **unlicensed practice of law** and those activities that did not constitute the **unlicensed practice of law** are still not the **unlicensed practice of law**. However, the Standing Committee felt that in order to provide further guidance to CAMS and members of The Florida Bar, some of the 1996 activities which are part of the current request needed clarification. The Standing Committee also felt that activities that were not addressed

in 1996 should be addressed using the *1996 opinion* as guidance.

2012 Request

Petitioner's request sets forth 14 activities. Each activity will be addressed.

1. Preparation of a Certificate of assessments due once the delinquent account is turned over to the association's lawyer;

2. Preparation of a Certificate of assessments due once a foreclosure against the unit has commenced;

3. Preparation of Certificate of assessments due once a member disputes in writing to the association the amount alleged as owed;

[1] In the *1996 opinion* the Court found that the preparation of certificates ***948** of assessments were ministerial in nature and did not require legal sophistication or training. Therefore, it was not the **unlicensed practice of law** for a CAM to prepare certificates of assessments.

None of the oral or written testimony provided a compelling reason why these certificates of assessment would warrant different treatment from those previously addressed by the Court in the *1996 opinion.* Thus, it is the opinion of the Standing Committee that a CAM's preparation of these documents would not constitute the **unlicensed practice of law**.

4. Drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;

[2] In the *1996 opinion,* the Court held that the drafting of documents which determine substantial rights is the **practice of law**. The governing documents set forth above determine substantial rights of both the community association and property owners. Consequently, under the *1996 opinion,* the preparation of these documents constitutes the **unlicensed practice of law**.

Further, in *Florida Bar v. Town,* 174 So.2d 395 (Fla.1965), the Court held that a nonlawyer may not prepare bylaws, articles of incorporation, and other documents necessary to the establishment of a corporation, or amendments to such documents. Amendments to a community association's declaration of covenants, bylaws, and articles of incorporation can be analogized to the corporate documents discussed in *Town.* Therefore, it is the opinion of the Standing Committee that the Court's holding in the *1996 opinion* should stand and nonlawyer preparation of the amendments to the documents would constitute the **unlicensed practice of law**.

5. Determination of number of days to be provided for statutory notice;

[3] In the *1996 opinion,* the Court found that determining the timing, method, and form of giving notices of meetings requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure and that such interpretation constitutes the **practice of law**. Thus, if the determination of the number of days to be provided for statutory notice requires the interpretation of statutes, administrative rules, governing documents or rules of civil procedure, then, as found by the Court in 1996, it is the opinion of the Standing Committee that it would constitute the **unlicensed practice of law** for a CAM to engage in this activity. If this determination does not require such interpretation, then it would not be the **unlicensed practice of law**.

6. Modification of limited proxy forms promulgated by the State;

[4] In the *1996 opinion,* the Court found that the modification of limited proxy forms that involved ministerial matters could be performed by a CAM, while more complicated modifications would have to be made by an attorney.[15] The Court found the following to be ministerial matters:

- modifying the form to include the name of the community association;
- phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement;
- phrasing a yes or no voting question concerning carryover of excess membership expenses; and
- ***949** phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents.[16]

For more complicated modifications, the Court found that

an attorney must be consulted. The *1996 opinion* did not provide any examples of more complicated modifications which would require consultation with an attorney. The Standing Committee believes this activity requires further clarification by example.

Using the examples given by the Court, the types of questions that can be modified without constituting the **unlicensed practice of law** do not require any discretion in the phrasing. For example, the sample form provided by the state has the following question: "Do you want to provide for less than full funding of reserves than is required by § 718.112(2)(f), Florida Statutes, for the next fiscal/calendar year? ___ YES ___ NO." There is no discretion regarding the wording, it is a yes or no question. The question could be reworded as follows: "Section 718.112(2)(f), Florida Statutes, discusses funding of reserves. Do you want to provide for less than full funding of reserves than is required by the statute for the next fiscal/calendar year? ___ YES ___ NO." It is still a yes or no question. As no discretion is involved, it does not constitute the **unlicensed practice of law** to modify the question.

On the other hand, if the question requires discretion in the phrasing or involves the interpretation of statute or legal documents, the CAM may not modify the form. After the above question regarding the reserves the form states "If yes, vote for one of the board proposed options below: (The option with the most votes will be the one implemented.) LIST OPTIONS HERE." Listing the options would be a modification of the form. If what to include in the list requires discretion or an interpretation of statute, an attorney would have to be consulted regarding the language and the CAM could not make a change. For example, § 718.112(f) has language regarding when a developer may vote to waive the reserves. The statute discusses the timing of the waiver and under what circumstances it may occur. As a question regarding this waiver requires the interpretation of statute, a CAM could not modify the form by including this question without consulting with a member of The Florida Bar. As found in the *1996 opinion,* making such a modification would constitute the **unlicensed practice of law**.

7. Preparation of documents concerning the right of the association to approve new prospective owners;

[5] In the *1996 opinion,* the Court found that drafting the documents required to exercise a community association's right of approval or first refusal to a sale or lease may or may not constitute the **unlicensed practice of law** depending on the specific factual circumstances. It may require the assistance of an attorney, since there could be legal consequences to the decision. Although CAMs may be able to draft the documents, they cannot advise the association as to the legal consequences of taking a certain course of action. Thus, the specific factual circumstances will determine whether it constitutes the **unlicensed practice of law** for a CAM to engage in this activity.

This finding can also be applied to the preparation of documents concerning the right of the association to approve new prospective owners. While there was no testimony giving examples of such documents, the Court's underlying principle ***950** that if the preparation requires the exercise of discretion or the interpretation of statutes or legal documents, a CAM may not prepare the documents.[7] For example, the association documents may contain provisions regarding the right of first refusal. Preparing a document regarding the approval of new owners may require an interpretation of this provision. An attorney should be consulted to ensure that the language comports with the association documents. On the other hand, the association documents may contain a provision regarding the size of pets an owner may have. Drafting a document regarding this would be ministerial in nature as an interpretation of the documents is generally not required.

8. Determination of affirmative votes needed to pass a proposition or amendment to recorded documents;

9. Determination of owners' votes needed to establish a quorum;

[6] In the *1996 opinion,* the Court found that determining the votes necessary to take certain actions—where the determination would require the interpretation and application both of condominium acts and of the community association's governing documents—would constitute the **practice of law**. Thus, if these determinations require the interpretation and application of statutes and the community association's governing documents, then it is the opinion of the Standing Committee that it would constitute the **unlicensed practice of law** for a CAM to make these determinations. If these determinations do not require such interpretation and application, it is the opinion of the Standing Committee that they would not constitute the **unlicensed practice of law**.

10. Drafting of pre-arbitration demand letters required by 718.1255, Fla. Stat.;

[7] Under Section 718.1255, Fla. Stat., prior to filing an

action in court, a party to a dispute must participate in nonbinding arbitration. The nonbinding arbitration is before the Division of Florida Condominiums, Time Shares, and Mobile Homes (hereinafter "the Division"). Prior to filing the petition for arbitration with the Division, the petitioner is required to serve a pre-arbitration demand letter on the respondent, providing:

> 1. advance written notice of the specific nature of the dispute,
>
> 2. a demand for relief, and a reasonable opportunity to comply or to provide the relief, and
>
> 3. notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires the dismissal of the petition without prejudice.

In the *1996 opinion,* the Court found that if the preparation of a document requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure, then the preparation of the documents constitutes the **practice of law**. It is the opinion of the Standing Committee that the preparation of a pre-arbitration demand letter would not require the interpretation of the above-referenced statute. The statutory requirements appear to be ministerial in nature, and do not appear to require significant legal expertise and interpretation or legal sophistication or training. Consequently, the preparation of this letter would not satisfy the second prong of the *Sperry* ***951** test, which requires that the person providing the service possess legal skill and a knowledge of the law greater than that possessed by the average citizen. For these reasons, it is the opinion of the Standing Committee that the preparation of a pre-arbitration demand letter by a CAM would not constitute the **unlicensed practice of law**.

Moreover, an argument can be made that the activity, even if the **practice of law**, is authorized. As noted in the Petitioner's March 28, 2012, letter, the Division has held that the statute does not require an attorney to draft the letter. (Formal Advisory Opinion request.) In *Florida Bar v. Moses,* 380 So.2d 412 (Fla.1980), the Court held that the legislature could oust the Supreme Court's authority to protect the public and authorize a nonlawyer to **practice** law before administrative agencies. As the Division of Florida Condominiums, Time Shares, and Mobile Homes has held that a nonlawyer may prepare the letter, the activity is authorized and not the **unlicensed practice of law**.

11. Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc.);

[8] In the *1996 opinion,* the Court found that the drafting of a notice of commencement form constitutes the **practice of law** because it requires a legal description of the property and this notice affects legal rights. Further, failure to complete or prepare this form accurately could result in serious legal and financial harm to the property owner.[18]

While the *1996 opinion* did not specifically address the preparation of **lien** waivers, the *1996 opinion* found that preparing documents that affect legal rights constitutes the **practice of law**. A **lien** waiver would certainly affect an association's legal rights. Further, as suggested by one of the witnesses, the area of construction **lien** law is a very complicated and technical area. (Tr., p. 40, l.10–19.) Therefore, it is the Standing Committee's opinion that the preparation of construction **lien** documents by a CAM would constitute the **unlicensed practice of law**.[19]

12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;

[9] In the *1996 opinion,* the Court found that the preparation of documents that established and affected the legal rights of the community association was the **practice of law**. Further, in *Sperry,* the Court found the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, was the **practice of law**. Thus, it is the Standing Committee's opinion that it constitutes the **unlicensed practice of law** for a CAM to prepare such contracts for the community association.

13. Identifying, through review of title instruments, the owners to receive pre-lien letters;

The testimony on this subject was mixed. Some witnesses felt that this activity was ministerial and would not be the ***952 unlicensed practice of law** (written testimony of Jeffrey M. Oshinsky, Mark R. Benson, and R.L. Reimer), while others thought that this would constitute the **unlicensed practice** if performed by a CAM (written testimony of Nicholas F. Lang, Shawn G. Brown, and Emily L. Lang). However, none of the testimony defined what was meant by identifying the owners to receive

pre-**lien** letters.

[10] It is the opinion of the Standing Committee that if the CAM is only searching the public records to identify who has owned the property over the years, then such review of the public records is ministerial in nature and not the **unlicensed practice of law**. In other words, if the CAM is merely making a list of all record owners, the conduct is not the **unlicensed practice of law**.

On the other hand, if the CAM uses the list and then makes the legal determination of who needs to receive a pre-**lien** letter, this would constitute the **unlicensed practice of law**. This determination goes beyond merely identifying owners. It requires a legal analysis of who must receive pre-**lien** letters. Making this determination would constitute the **unlicensed practice of law**.

14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

[11] In the *1996 opinion,* the Court found that it constituted the **unlicensed practice of law** for a CAM to respond to a community association's questions concerning the application **of law** to specific matters being considered, or to advise community associations that a course of action may not be authorized by law or rule. The court found that this amounted to nonlawyers giving legal advice and answering specific legal questions, which the court specifically prohibited in *In re: Joint Petition of The Florida Bar and Raymond James & Assoc.*, 215 So.2d 613 (Fla.1968) and *Sperry.*

Further, in *Florida Bar v. Warren,* 655 So.2d 1131 (Fla.1995), the Court held that it constitutes the **unlicensed practice of law** for a nonlawyer to advise persons of their rights, duties, and responsibilities under Florida or federal law and to construe and interpret the legal effect of Florida law and statutes for third parties. In *Florida Bar v. Mills,* 410 So.2d 498 (Fla.1982), the Court found that it constitutes the **unlicensed practice of law** for a nonlawyer to interpret case law and statutes for others.

Thus, it is the Standing Committee's opinion that it would constitute the **unlicensed practice of law** for a CAM to engage in activity requiring statutory or case law analysis to reach a legal conclusion.

CONCLUSION

The findings of the Court in *Florida Bar re: Advisory Opinion Activities of Community Association Managers,* 681 So.2d 1119 (Fla.1996) should not be disturbed and answer many of the questions posed by the Petitioner. Areas which required clarification have been clarified by way of example using the *1996 opinion* as guidance. Similarly, activities that were not addressed in 1996 are addressed using the *1996 opinion* and other case law as guidance. This proposed advisory opinion is the Standing Committee on **Unlicensed Practice of Law's** interpretation of the law.

Respectfully Submitted,

/s/ Nancy Blount by Jeffrey T. Picker
Nancy Munjiovi Blount, Chair

Standing Committee on
Unlicensed Practice of Law

The Florida Bar

651 E. Jefferson Street

***953** Tallahassee, FL 32399–2300

(850) 561–5840

Fla. Bar No. 332658

Primary Email: upl@flabar.org

/s/ Jeffrey T. Picker
Jeffrey T. Picker

Fla. Bar No. 12793

/s/ Lori S. Holcomb
Lori S. Holcomb

Fla. Bar No. 501018

The Florida Bar

651 East Jefferson Street

Tallahassee, Florida 32399–2300

(850) 561–5840

Primary Email: jpicker@flabar.org

Secondary Email: upl@flabar.org

All Citations

177 So.3d 941

Footnotes

1 As provided in Rule Regulating the Florida Bar 10–9.1(g)(4), the advisory opinion shall have the force and effect of an order of this Court and shall be published accordingly.

2 Although the request for opinion addresses CAMS specifically, the Standing Committee's opinion would apply to the activities of any nonlawyer.

3 *The Florida Bar v. Sperry,* 140 So.2d 587, 591 (Fla.1962), *vacated on other grounds,* 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963).

4 *Id.*

5 *1996 opinion,* 681 So.2d at 1123.

6 *Id.* at 1123.

7 *Id.*

8 *Id.*

9 *Id.* at 1122.

10 *Id.* at 1124.

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.* at 1123.

18 *Id.* at 1123.

19 *In re Advisory Opinion–Nonlawyer Preparation of Notice to Owner and Notice to Contractor,* 544 So.2d 1013 (Fla.1989), the Court held that it was not the **unlicensed practice of law** for nonlawyers to complete notice to owner and preliminary notice to contractor forms under the mechanic's **lien** laws so those forms are not included in the current opinion.

End of Document

681 So.2d 1119
Supreme Court of Florida.

THE FLORIDA BAR re ADVISORY OPINION-ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS.

No. 86929.
|
July 18, 1996.
|
Rehearing Denied Oct. 24, 1996.

Licensed community association manager (CAM) petitioned for advisory opinion on whether several aspects of community association management would constitute **unlicensed practice of law**. The Supreme Court, Harding, J., held that: (1) ministerial actions taken by CAMs which do not require significant legal expertise and interpretation do not constitute unauthorized **practice of law**, such as completing various forms and drafting of notices, but (2) CAMs would violate bar against unauthorized **practice of law** by drafting documents requiring legal description of property or establishing rights of community association, by making determinations and drafting documents requiring interpretations of statutes and various rules, or by giving advice as to legal consequences of taking certain courses of action.

Ordered accordingly.

West Headnotes (8)

[1] **Attorney and Client**
Drafting or preparation of documents in general

Ministerial actions taken by licensed community association managers (CAMs) which do not require significant legal expertise and interpretation do not constitute unauthorized **practice of law** and, thus, CAMs can complete Secretary of State forms for change of registered agent or office for corporations and for annual corporation report, and can draft certificates of assessments, first and second notices of date of election, ballots, written notices of annual meeting, annual meeting or board meeting agendas, and affidavits of mailing.

Cases that cite this headnote

[2] **Attorney and Client**
Drafting or preparation of documents in general

Completion of frequently asked questions and answers form by licensed community association managers (CAMs) constitutes **unlicensed practice of law**, in light of necessity for interpretation of community association documents and significant potential effect on individual purchaser's legal rights; decision to purchase unit is often based largely on information on form, and misleading or incorrect information could harm purchaser.

2 Cases that cite this headnote

[3] **Attorney and Client**
Real estate; mortgages and **liens**; title insurance

Drafting of claim of **lien** and satisfaction of claim of **lien** documents would constitute unauthorized **practice of law** if accomplished by licensed community association managers (CAMs); claim documents require legal description of property, and establish rights of community association with respect to **lien**, its duration, renewal information, and action to be taken on it.

1 Cases that cite this headnote

[4] **Attorney and Client**
What Constitutes **Practice of Law**; Prohibited and Permitted Acts

Determination of timing, method, and form of notices of meetings would constitute unauthorized **practice of law** if accomplished by licensed community association managers (CAMs), in light of necessity for interpretation of statutes, administrative rules, governing documents, and state rules of civil procedure. West's F.S.A. RCP Rule 1.090(a, e).

Cases that cite this headnote

[5] **Attorney and Client**
What Constitutes **Practice of Law**; Prohibited and Permitted Acts

Determination of votes necessary to take certain actions would constitute unauthorized **practice of law** by licensed community association managers (CAMs) if determination would require interpretation and application both of condominium acts and of community association's governing documents.

Cases that cite this headnote

[6] **Attorney and Client**
What Constitutes **Practice of Law**; Prohibited and Permitted Acts

Licensed community association managers (CAMs) would violate prohibition against unauthorized **practice of law** by responding to community association's questions concerning application **of law** to specific matters being considered, or by advising community associations that course of action may not be authorized by law or rule.

Cases that cite this headnote

[7] **Attorney and Client**
Drafting or preparation of documents in general

Licensed community association manager (CAM) may complete or modify limited proxy form without violating prohibition against unauthorized **practice of law** to extent such work involves ministerial matters contemplated by statutory description of community association management, but attorney must be consulted as to more complicated drafting or modifications. West's F.S.A. § 468.431(2).

Cases that cite this headnote

[8] **Attorney and Client**
What Constitutes **Practice of Law**; Prohibited and Permitted Acts

Although licensed community association managers (CAMs) may be able to draft documents required to exercise community association's right of approval or first refusal to sale or lease, CAMs cannot advise association as to legal consequences of taking certain course of action without violating bar against unauthorized **practice of law** and, thus, assistance of attorney may be required.

1 Cases that cite this headnote

Attorneys and Law Firms

***1120** John A. Yanchunis, Chair, Standing Committee on **Unlicensed Practice of Law**, St. Petersburg; John F. Harkness, Jr., Executive ***1121** Director and Lori S. Holcomb, Assistant UPL Counsel, The Florida Bar, Tallahassee, on behalf of the Standing Committee on **Unlicensed Practice of Law**.

William D. Clark, Venice, on behalf of Jone B. Weist.

Thomas R. Schwarz, Lauderhill, on behalf of Daniel I. Wincor.

Hal Hildebrandt, AMS, PCAM, Chairman and R. Michael Kennedy of Kennedy & Pyle, South Daytona, on behalf of Coalition of C.A.M. Organizations.

Mark R. Benson, PCAM, Fort Myers, on behalf of

Bensons's Inc.

Steven M. Siegfried and H. Hugh McConnell of Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., Coral Gables, Amicus Curiae supporting opinion of the Standing Committee on **Unlicensed Practice of Law**.

Opinion

HARDING, Justice.

Pursuant to rule 10-7.1(b) of the Rules Regulating The Florida Bar, Jone B. Weist, a licensed Community Association Manager ("CAM"), petitioned The Florida Bar Standing Committee on the **Unlicensed Practice of Law** ("the Standing Committee") for an advisory opinion on whether several aspects of community association management constitute the **unlicensed practice of law**. We have jurisdiction to review the proposed advisory opinion pursuant to rule 10-7.1(g) of the Rules Regulating the Florida Bar and article V, section 15 of the Florida Constitution.

Specifically, the Standing Committee was asked to decide whether it constitutes the **unlicensed practice of law** for a CAM to engage in any of the following activities:

1. To complete any of the following preprinted forms without direction from the client as to which form to use or what information goes on the form:

   A. Secretary of State form CR2EO45 (Statement of Change of Registered Office or Registered Agent or Both for Corporations);

   B. Secretary of State Annual Corporation Report;

   C. Department of Business and Professional Regulation Form BPR 33-032 (Frequently Asked Questions and Answers Sheet);

2. To draft any of the following documents for clients:

   A. Certificate of Assessments;

   B. Claim of **Lien**;

   C. Satisfaction of Claim of **Lien**;

   D. First Notice of Date of Election;

   E. Second Notice of Date of Election;

   F. Ballot;

   G. Written Notice of Annual Meeting;

   H. Annual Meeting Agenda

   I. Modification of Department of Business and Professional Regulation Form BPR 33-033 (Limited Proxy Form) for a specific community association and a specific meeting (including modifying the form with the name of the association; the date, time, and place of the meeting; phrasing yes or no questions on the issues of waiving reserves, waiving the compiled, reviewed or audited financial statement requirement, carryover of excess membership expenses, and adoption of amendments to the Articles of Incorporation, Bylaws or condominium cooperative documents);

   J. Limited Proxy Form;

   K. Affidavit of Mailing;

   L. Notice of Board Meeting;

   M. Board Meeting Agenda;

   N. Notice of Commencement form;

   O. Documents required to exercise the association's right of approval and/or right of first refusal on the sale or lease of a parcel;

3. To determine the timing, method, and form of giving notices of meetings to unit owners and board members, which generally requires interpretation and application of the requirements of statutes, administrative rules, the community association's governing documents, and rule 1.090(a) and (e) of the Florida Rules of Civil Procedure;

4. To determine the votes required for the community association to take certain actions whenever interpretation and application of any or all of the following is required: the Florida Business Corporation ***1122** Act, Florida Not For Profit Corporation Act, Condominium Act, and the community association's governing documents; or

5. To reply to the association's question about the application **of law** to a matter being considered, and to advise an association that an action or course of action may not be authorized by statute, administrative rule, or the association's governing documents.

The Standing Committee gave notice of the June 23, 1995 hearing in accordance with rule 10-9.1(f) of The Rules Regulating the Florida Bar. Several individuals spoke at the hearing, and written testimony was also received. At a special meeting on November 3, 1995, the Standing

Committee voted to issue the proposed opinion.

CAMs are licensed through the Department of Business and Professional Regulation's ("BPR") Bureau of Condominiums. Community association management is defined in section 468.431(2), Florida Statutes (1995):

> "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 50 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

§ 468.431, Fla. Stat. (1995). CAMs are also governed by the Florida Administrative Code's Standards of Professional Conduct. In order to be licensed, CAMs must have a general knowledge of condominium law and fulfill continuing education requirements.

The Standing Committee voted on several matters that it felt were purely ministerial in nature, and therefore did *not* constitute the unauthorized **practice of law**. There was no testimony in opposition, so the proposed advisory opinion reflects that these items do *not* constitute the unauthorized **practice of law**: completing Secretary of State form CR2EO45 and Secretary of State Annual Corporation Report; and drafting certificates of assessments, first notices of date of election, second notices of date of election, ballots, written notices of annual meeting, annual meeting agendas, affidavits of mailing, notices of board meetings, and board meeting agendas.

After reviewing the oral and written testimony presented, the Standing Committee proposed answers to the remaining questions. It found that the following *do* constitute the unauthorized **practice of law**: completing BPR Form 33-032; drafting a Claim of **Lien**, Satisfaction of Claim of **Lien**, and Notice of Commencement form; determining the timing, method, and form of giving notice of meetings; determining the votes necessary for certain actions which would entail interpretation of certain statutes and rules; and answering a community association's question about the application **of law** to a matter being considered or advising a community association that an action or course of action may not be authorized by law or rule.

The Standing Committee found that the following may or may not constitute the unauthorized **practice of law**, depending on the specific factual circumstances: modification of Form BPR 33-033, drafting a limited proxy form, and drafting documents required to exercise the community association's right of approval or right of first refusal on the sale or lease of a parcel.

Several parties filed objections to all or part of the proposed advisory opinion, and one party (a law firm) filed an amicus brief in support of the proposed opinion. The petitioner ***1123** filed a motion for clarification of the proposed opinion, along with her objections.

After reviewing the written and oral testimony, the proposed advisory opinion, and the comments filed with the Court, we adopt the findings of the proposed advisory opinion as explained below.

Although there is no comprehensive definition of what constitutes the **unlicensed practice of law**, we are guided in our analysis by our words from *State ex rel. Florida Bar v. Sperry:*

> It is generally understood that the performance of services in representing another before the courts is the **practice of law**. But the **practice of law** also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and

> the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.

State ex rel. Florida Bar v. Sperry, 140 So.2d 587, 591 (Fla.1962), *vacated on other grounds,* 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963).

[1] We agree that those actions designated by the Standing Committee as ministerial do not constitute the **practice of law**. CAMs can complete the two Secretary of State forms-form CR2EO45 (change of registered agent or office for corporations) and Annual Corporation Report-because completion of those two forms does not require significant legal expertise and interpretation. Similarly, drafting certificates of assessments, first and second notices of date of election, ballots, written notices of annual meeting, annual meeting or board meeting agendas, and affidavits of mailing do not require legal sophistication or training.

[2] We also agree that those items so designated by the Standing Committee do constitute the **unlicensed practice of law**. Completion of BPR Form 33-032 (Frequently Asked Questions and Answers Sheet) requires the interpretation of community association documents. The decision to purchase a unit is often based largely on the information on this sheet. Because this form could significantly affect an individual's legal rights, misleading or incorrect information could harm the purchaser. Therefore, initial completion of this form requires the assistance of a licensed attorney. However, subsequent updates which do not modify the form can be completed without the assistance of an attorney.

[3] Drafting both a claim of **lien** and satisfaction of claim of **lien** requires a legal description of the property; it establishes rights of the community association with respect to the **lien**, its duration, renewal information, and action to be taken on it. The claim of **lien** acts as an encumbrance on the property until it is satisfied. Because of the substantial rights which are determined by these documents, the drafting of them must be completed with the assistance of a licensed attorney. For the same reason, we agree with the Standing Committee that the drafting of a notice of commencement form constitutes the **practice of law**. This notice affects legal rights as well. *See, e.g.,* § 713.135, Fla. Stat. (1995). Failure to complete or prepare this form accurately could result in serious legal and financial harm to the property owner.

[4] [5] Determining the timing, method, and form of giving notices of meetings requires the interpretation of statutes, administrative rules, governing documents, and rule 1.090(a) and (e), Florida Rules of Civil Procedure. Such interpretation constitutes the **practice of law**. *See, e.g., Florida Bar v. Warren,* 655 So.2d 1131 (Fla.1995). Determining the votes necessary to take certain actions-where the determination would require the interpretation and application both of condominium acts and of the community association's governing documents-would therefore also constitute the **practice of law**. *Id.*

[6] It also clearly constitutes the **practice of law** for a CAM to respond to a community association's questions concerning the application **of law** to specific matters being considered, or to advise community associations that a course of action may not be authorized by law or rule. This amounts to nonlawyers ***1124** giving legal advice and answering specific legal questions; this Court has specifically prohibited this behavior. *In re The Florida Bar,* 215 So.2d 613 (Fla.1968); *Sperry,* 140 So.2d at 591.

[7] The remaining activities exist in a more grey area; the specific circumstances surrounding their exercise determine whether or not they constitute the **practice of law**. A CAM may modify BPR Form 33-033 (Limited Proxy Form) to the extent such modification involves ministerial matters contemplated by the description in section 468.431(2). This includes modifying the form to include the name of the community association; phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement; phrasing a yes or no voting question concerning carryover of excess membership expenses; and phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents. As to more complicated modifications, however, an attorney must be consulted.

As to drafting a limited proxy form, those items which are ministerial in nature, such as filling in the name and address of the owner, do not constitute the **practice of law**. However, if drafting of an actual limited proxy form or questions in addition to those on the preprinted form is required, the CAM should consult with an attorney.

[8] Drafting the documents required to exercise a community association's right of approval or first refusal to a sale or lease may also require the assistance of an attorney, since there could be legal consequences to the

decision. Although CAMs may be able to draft the documents, they cannot advise the association as to the legal consequences of taking a certain course of action.

We recognize that CAMs are specially trained in the field of community association management, but we agree with the Standing Committee that there are several areas in that field which would require the assistance of an attorney. We therefore approve the findings of the Standing Committee's proposed opinion, as discussed above.

It is so ordered.

KOGAN, C.J., and SHAW, GRIMES, WELLS and ANSTEAD, JJ., concur.

OVERTON, J., recused.

All Citations

681 So.2d 1119, 21 Fla. L. Weekly S328

End of Document

544 So.2d 1013
Supreme Court of Florida.

THE FLORIDA BAR
In re ADVISORY OPINION-NONLAWYER PREPARATION OF NOTICE TO OWNER AND NOTICE TO CONTRACTOR.

No. 73306.
|
June 1, 1989.

Petition was filed for advisory opinion with respect to whether certain conduct constituted the **unlicensed practice of law**. The Supreme Court held that it is not the **unlicensed practice of law** for nonlawyers to engage in communications with their customers for the purpose of completing notice to owner forms and preliminary notice to contractor forms under the mechanics' **lien** laws.

Ordered accordingly.

West Headnotes (1)

[1] Attorney and Client
⇐Real estate; mortgages and **liens**; title insurance

It is not the **unlicensed practice of law** for nonlawyers to engage in communications with their customers for the purpose of completing the notice to owner forms and preliminary notice to contractor forms with respect to mechanics' **liens**, but nonlawyer may give no legal advice in connection with the preparation and service of the notices. West's F.S.A. §§ 713.06(2), 713.23(1)(d).

3 Cases that cite this headnote

Attorneys and Law Firms

***1013** Stephen R. Moorhead of Matthews & Moorhead, Pensacola, for petitioner.

Joseph R. Boyd, Chairman, Tallahassee, Mary Ellen Bateman, UPL Counsel, and Lori S. Holcomb, Asst. UPL Counsel, Tallahassee, for The Standing Committee on the **Unlicensed Practice Of Law**, respondent.

Robert B. Worman, Orlando, amicus curiae for Nat. Ass'n of Credit Management of Florida, Inc.

Opinion

PER CURIAM.

In accordance with the provisions of rule 10-7.1 of the Rules Regulating The Florida Bar, Stephen R. Moorhead filed a petition for an advisory opinion with respect to whether certain conduct constituted the **unlicensed practice of law**. After holding a public hearing at which testimony was presented, the Florida Bar Standing Committee on the **Unlicensed Practice of Law** (Committee) issued a proposed advisory opinion with respect to the following question:

> Is it the **unlicensed practice of law** for a nonlawyer to prepare the Notice To Owner required by Fla.Stat. § 713.06(2) and the Notice To Contractor required by Fla.Stat. § 713.23(1)(d)?

We review the proposed advisory opinion pursuant to article V, section 15, of the Florida Constitution, and rule 10-7.1(g) of the Rules Regulating The Florida Bar.

In order to put the question in context, the proposed advisory opinion described the mechanics' **lien** law requirements for the Notice to Owner (NTO) and Notice to Contractor (preliminary notice) as follows:

> When working on a job where a payment bond has not been provided, the lienor is required to serve a NTO as the first step in perfecting the **lien**. Fla.Stat. § 713.06(2). The NTO must be furnished by all lienors, except laborers, who are not in privity with the owner. Lienors in privity (§ 713.05), professional lienors (§ 713.03), and lienors who make the site suitable for improvement (§ 713.04) are not required to serve a NTO. The NTO must contain the lienor's name and address, a description of the property, and the nature of the services or materials to be furnished. Section 713.06(2) sets forth a form which may be used as the NTO.

The NTO must be served on the owner and any other person designated in the Notice of Commencement before commencing or within forty-five (45) days of commencing to furnish materials and services. Failure to serve the notice on designated persons, other than the owner, does not invalidate the **lien** nor does the NTO act as a **lien**, cloud, or encumbrance on the property. Lienors working for a subcontractor must serve a ***1014** copy of the NTO on the contractor. Lienors working for a sub-subcontractor must serve the NTO on the subcontractor and the contractor. Service is defined in Fla.Stat. § 713.18 and includes actual delivery, mailing by certified or registered mail, or, if the above cannot be accomplished, posting on the premises.

....

When working on a job where a payment bond has been furnished, the preliminary notice, entitled the Notice To Contractor, takes the place of the NTO. Under Fla.Stat. § 713.23(1)(d) if a bond is furnished, a lienor not in privity with the owner, except a laborer, must serve the contractor a notice that he will look to the bond for payment. The notice must be served within 45 days after beginning to furnish labor, materials, or services; however, if the lienor does not know of the existence of the bond, he shall have 45 days from the date he is notified of the bond to serve the notice. Failure to record and serve the preliminary notice precludes an action against the contractor or surety for recovery under the bond.

The statute sets forth a form which may be used as the preliminary notice. The form contains blanks for the name of the contractor, the nature of the services or materials furnished, a description of the property, the name and address of the owner, and the name of the person who ordered the work.

The Florida Bar Standing Committee on the **Unlicensed Practice of Law**, Proposed Advisory Opinion of the Florida Bar Standing Committee on the **Unlicensed Practice of Law**, at 5-6 (Nov. 10, 1988) (on file with the Clerk of the Florida Supreme Court) (footnote omitted) [hereinafter proposed advisory opinion].

The proposed advisory opinion included the following findings of fact:

A. *CURRENT **PRACTICE***

The majority of the NTOs and preliminary notice served today are completed and served by notice to owner services (hereinafter "the industry"). Representatives from six such businesses testified at the public hearing. Although an exact estimate is impossible, the companies present prepare from a few hundred to a few thousand notices each month, a volume that most attorneys could not handle. The average cost of preparing the notices is twenty-five dollars ($25.00) per notice.

The standard operating procedure in the industry is for the prospective lienor, the customer, to contact one of the services and provide basic information about the job. The customer will be asked to provide his name and address, the services or materials he is providing, the name of the owner of the property if he knows it, and a general location of the property. The information is taken over the telephone or by filling out an information sheet. The company then verifies the information through a search of the public records in much the same way a title insurance company searches the records. Where possible, the search is done with computers. If the particular county does not have computerized records, an employee of the company may go to the courthouse and search the records. If a company covers more than one county, it may have employees in the different counties to conduct the search. One document the company may look at is the Notice of Commencement filed by the owner. It is the custom of the industry to combine the NTO required by § 713.06(2) and the preliminary notice required by § 713.23(1)(d) into one document. The verified information is placed on the notice and sent certified mail to the owner and any other individuals required to receive the notice.

In addition to completing and serving the notices, the industry holds seminars and workshops conducted by local attorneys knowledgeable in mechanics' **lien** law. The industry is in constant contact with their attorneys to learn of any changes or developments in the law. They also keep their customers up to date on notices of commencement and **liens** filed in their county.

***1015** The only notices which the industry completes and serves are the NTO and preliminary notice. If a customer comes to them requesting a Claim of **Lien** or Notice of Nonpayment, the customer is told to see an attorney. Generally, the construction industry is aware of the requirements of the mechanics' **lien** statute as it is tested on the contractor's licensing examination. (See also *National Gypsum Co. v. Travelers Indemnity Co.*, 417 So.2d 254 (Fla.1982) wherein the Court found that the construction industry is aware of the requirement to give timely notice.) Any changes in the law can be relayed to the industry through the seminars.

B. *PUBLIC HARM*

The only testimony the Standing Committee received regarding public harm was the testimony of an attorney who **practices** in the mechanics' **lien** area. He testified that in his fourteen years of **practice** he has seen a NTO being sent improperly approximately ten times. It was his feeling, and the feeling of many of the other witnesses, that the marketplace takes care of any business that is not completing the notices properly as people will not use their services and the business will eventually close. Besides this testimony, the record is devoid of any evidence of public harm when only these two notices are being completed.

C. *SUMMARY OF TESTIMONY*

The testimony of all of the witnesses can best be summarized by the following quote from the public hearing:

> "MR. SONDAK: Before we hear from anybody else in the industry who does this and is endorsing it, I want to ask at this time, has anybody come down here give testimony or information to us to indicate that these **practices** ought to be or are the **unlicensed practice of law**?
>
> Is there anybody who wants to make that case?
>
> (No response.)
>
> MR. SONDAK: As I understand it, it's come down to the Notice to Contractor, Notice to Owner documents, not the Claim of **Lien** document.
>
> Does anybody have a problem or want to tell us where they are concerned about this being done by nonlawyers?
>
> (No response.)

Transcript of Public Hearing, June 16, 1988, pp. 83-84.

Proposed advisory opinion at 8-11.

The Committee concluded that the preparation and service of the NTO and the preliminary notice by nonlawyers constituted the **practice of law**. However, to the extent that nonlawyers are completing the NTO and the preliminary notice with information supplied by the customer, the Committee expressed the opinion that the activity was authorized by the decision in *Florida Bar v. Brumbaugh,* 355 So.2d 1186 (Fla.1978), providing this Court approved the statutory form or some other form of those instruments in accordance with rule 10-1.1(b). The Committee further concluded that the nonlawyer may search the public records to verify the information given by the customer but that if a conflict was found, the nonlawyer should only inform the customer of the conflict and should not attempt to resolve it or give legal advice. Its conclusion was summarized as follows:

> After receiving testimony and reviewing the applicable law, it is the opinion of the Standing Committee on the **Unlicensed Practice of Law** that nonlawyer preparation and completion of the Notice To Owner and preliminary notice, although the **practice of law**, is authorized. Therefore, nonlawyers may complete and serve the notices. The nonlawyers may not, however, give legal advice, advise their customers in matters involving the mechanics' **lien** statute, or complete any other forms required or allowed by the mechanics' **lien** statute. This opinion applies to the Notice To Owner (Fla.Stat. § 713.06(2)(a)) and preliminary notice (Notice To Contractor, Fla.Stat. § 713.23(1)(d)) only and any other form or notice contained in the mechanics' **lien** statute or elsewhere is not covered by this proposed advisory opinion.

Proposed advisory opinion at 19.

The National Association of Credit Management of Florida, Inc. (Association) ***1016** has filed an amicus curiae brief. While agreeing with the Committee's findings of fact, the Association takes issue with the conclusion that nonlawyer preparation of the NTO and the preliminary notice including communicating with lienors regarding information necessary to fill in the blank forms for these instruments constitutes the **unlicensed practice of law**. The Association requests that this Court not adopt the position of the Committee that nonlawyers not be allowed to communicate with their customers

> regarding the information utilized on the form, the practical advantages of attempting to serve

> by certified mail, return receipt requested, as opposed to hand delivery or posting on the job site due to time constraints, the need for serving more than just an original Notice to Owner on the Owner, and the appropriateness or lack thereof of serving a Notice where the time period within which to serve same may have already expired, based upon a mathematical computation of the 45 day time limit from the furnishing of the first materials, labor or services to the job site.

Amicus Curiae Brief of National Association of Credit Management of Florida, Inc. at 8-9.

In *State v. Sperry,* 140 So.2d 587, 591 (Fla.1962), *vacated on other grounds,* 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963), this Court said:

> We think that in determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the **practice of law** it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the **practice of law**.

However, in *Florida Bar v. Brumbaugh,* we noted that the *Sperry* definition was broad and is given content by this Court only as it applies to the specific circumstances of each case.

> We agree that "any attempt to formulate a lasting, all encompassing definition of '**practice of law**' is doomed to failure 'for the reason that under our system of jurisprudence such **practice** must necessarily change with the everchanging business and social order.' " *State Bar of Michigan v. Cramer,* supra, 399 Mich. 116, 249 N.W.2d [1] at 7.

355 So.2d at 1191-92.

Accepting the Committee's findings of fact, we are not persuaded that the **practice** of the "industry" as described in the Committee's report constitutes the **unlicensed practice of law**. As noted by the Committee, the construction industry, which is served by those who fill out the forms, is aware of their significance and generally knowledgeable of the requirements pertaining to the perfection of mechanics' **lien** rights. The two forms in question are statutory forms requiring only a minimum of information which may be easily obtained from the customer or the public records. The decisions concerning the manner of service are largely dictated by the statutes and appear to be incidental to the preparation of the forms. Substantial compliance with the furnishing of these notices will not defeat a claim against a person who has not been adversely affected. § 713.06(2)(d), Fla.Stat. (1987). *Walter E. Heller & Co. Southeast, Inc. v. Palmer-Smith,* 504 So.2d 511 (Fla. 5th DCA 1987). There has been no showing that the public is being harmed by the preparation of these forms by nonlawyers.

Thus, we conclude that it is not the **unlicensed practice of law** for nonlawyers to engage in communications with their customers for the purpose of completing the NTO forms and preliminary notice forms as that activity is described in the Committee report. However, we agree that the nonlawyer may give no legal advice in connection with the preparation and service of ***1017** the notices. Our opinion is limited to the NTO and the preliminary notice. In view of our disposition of the matter, it is unnecessary for us to consider whether this Court should adopt any forms to be used for these notices.

It is so ordered.

EHRLICH, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., concur.

All Citations

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