IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR
STANDING COMMITTEE ON THE
UNLICENSED PRACTICE OF LAW

CASE NO. 74,479

IN RE: FAO #89001, NONLAWYER
PREPARATION OF PENSION PLANS
_____/

BRIEF AND APPENDIX OF THE FLORIDA ASSOCIATION OF LIFE UNDERWRITERS; NATIONAL ASSOCIATION OF LIFE UNDERWRITERS; AND THE ASSOCIATION FOR ADVANCED LIFE UNDERWRITING IN OPPOSITION TO THE PROPOSED ADVISORY OPINION

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PRELIMINARY STATEMENT

This Brief is filed in behalf of the following parties, pursuant to Supreme Court Order dated August 30, 1989:

A. The Florida Association of Life Underwriters (hereinafter called "FALU"), a Florida corporation, with offices located at 2909 Bay to Bay Blvd., Suite 410, Tampa, FL 33629. FALU is an organization of full-time life insurance underwriters/agents, consisting of approximately 8,000 members who are licensed to sell life insurance and related products in Florida. FALU has association counterparts in each of the 50 states and the U.S. territories of Puerto Rico and Guam.

B. The National Association of Life Underwriters (hereinafter called "NALU"), a District of Columbia corporation, with offices located at 1922 F Street, N.W., Washington, DC 20006. NALU is the national counterpart of FALU.

C. The Association for Advanced Life Underwriting (hereinafter called "AALU"), a conference organization in the nature of a division of NALU, with offices located at 1922 F Street, N.W., Washington, DC 20006. The membership of the AALU Conference consists of members from both NALU and its other state and territorial counterparts who, among other things, specialize in the pension plan activity which is the subject of this cause.

This Brief presents some alternative positions for consideration by the Court,

The joint position of FALU, NALU, and AALU is argued under Issue I "General Considerations", and Issue II "Specific Considerations".

Because AALU is a more sophisticated organization of underwriters engaged in various aspects of so-called advanced areas of life insurance marketing and service, including pension plans, it has developed a more sophisticated legal position extending somewhat beyond Issues I and II herein. The AALU position is set forth under Issue 111, entitled "The AALU Position".

The following abbreviations will be used:

> Proposed Advisory Opinion dated July 28, 1989; by the Florida Bar, Standing Committee on the Unlicensed Practice of Law--"the Opinion"; and as "Op" in certain cites.
>
> The Florida Bar--"The Bar".
>
> Unlicensed Practice of Law--"UPL".

All emphasis in this Brief is supplied.

STATEMENT OF THE CASE AND FACTS

The proposed Advisory Opinion dated July 28, 1989, proposes the following question:

> Whether it is the unlicensed practice of law for a nonlawyer to render advice as to the design of a pension plan and/or draft or amend a pension plan for another.

Review by this Court is grounded in Rule 10-7 of the Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law.

This Brief is submitted in opposition to the Opinion, with suggested modifications to those boundary lines drawn by it.

NOTE: The foregoing question does not say "legal advice", only "advice".

SUMMARY OF ARGUMENT

ISSUE I. As UPL policymaker, this Court should consider abstention. But if not, then it should not expand Turner beyond the "reasonable protection" standard for those advised. In the modern pension plan environment, such paternalistic expansion could result in Court sanctioned unfair competition.

ISSUE 11. Pension plan administration would be unduly burdened and disrupted if the Opinion's question is answered in the affirmative. And its exaggerated perception of public harm is analyzed in light of nonlawyer activities already permitted by the James and Turner cases.

ISSUE 111. After full disclosure to the employer, it should be allowed more freedom of choice between lawyer and nonlawyer assistance than now exists under Florida UPL rules.

ARGUMENT

ISSUE I. GENERAL CONSIDERATIONS

A. The Court as Policy Maker: Abstention.

In Fla. Bar v. Brumbaugh, 355 So.2d 1186, 1189 (1978), this Court announced its leading role in the field of UPL to be that of a policy maker. Subsequent cases confirm that role. Policy making must consider changing with the times even more so than the law, even to the point of abstention in this case.

Now is a good time to seriously consider that policy component denominated by Justice Oliver Wendell Holmes, Jr., as the "felt necessities of the time" . . . "in determining rules by which men should be governed". Holmes, The Common Law (1881), Lecture 1, p. 1.

One distinction between the Opinion and the cases cited in it are that the cited cases deal with actual facts: real parties in interest: and hard record evidence developed in adversary proceedings. But the Opinion is only what it says, advisory. Because of this realistic deficiency in the instant Record, this Court's role as a policy maker on UPL is even more sensitive and fiduciary when it comes to pronouncements that affect the public: the world of commerce: the federal interplay of ERISA with state regulations: and the ''guidelines'' requested by The Bar (Op., p.7). In short, these "guidelines" are requested by The Bar to be issued in the abstract, absent any real parties in interest

who are guilty of UPL, unlike the case authorities cited in the Opinion, which are based on "evidence"; see Brumbaugh, supra.

If there is "confusion" (Op., p.4) as to the exact boundaries of In Re: The Florida Bar, In re Turner, 355 So.2d 766 (Fla. 1978), it is not likely to be resolved permanently except on a case-by-case basis. Turner is actually a clear pronouncement.

B. The Standard: Reasonable Protection of Those Advised.

Short of outright abstention because of these deficiencies in the Record and no real parties, it is suggested that this Court not expand the rules set forth in Turner, supra, to include more activities in UPL than are called for. There is clear Court policy in Brumbaugh, supra, at p. 1192, to support this suggestion of the least "drastic solution". An overkill in the use of Florida's police power is certainly unwarranted when it is the way of "greater interference", Brumbaugh at p. 1192.

In State ex rel Fla. Bar v. Sperry, 140 So.2d 587, 591 (Fla. 1962); 373 U.S. 379 (1963) (reversed on other grounds n/a to definition of practice of law), this Court developed an insightful and flexible, working "general definition" of conduct which constitutes the practice of law. That definition calls for the "reasonable protection" of those (clientele) advised. Brumbaugh, at p. 1191-92, says this general definition, good though it is, must be subject to change "with the ever changing

business and social order". But, of course, the "reasonable protection" standard for those advised should not be diminished by lowering that standard. Neither should "reasonable protection" be made unreasonable by raising the standard of protection unreasonably high, reaching "paternalistic" levels shunned in Brumbaugh, p. 1193. The effects of some aspects of the Opinion promote an unreasonable standard.

One clear example of the so-called "ever changing business and social order" is the evolution of standard contracts printed and distributed by the American Institute of Architects ("AIA contracts"). The practicing architect uses these printed forms, interprets them; gives not only advice but testimony on their meaning; and creates and types in any number of very specific provisions, tailored by him to accommodate the individual needs of both the builder who implements the architects plans, and the owner who pays for both the plans and the construction.

In Re The Florida Bar and Raymond James & Associates, 215 So.2d 613 (1968), this Court sets forth at p. 614 certain activities authorized by that securities dealer. The net effect of these activities can lead to very sophisticated results, even though the forms are categorized as "simple, routine, standardized, and prototype." The James case approves nonlawyer activity to complete (or aid in the completion of) certain forms supplied by institutional trustees or custodians, life insurance or mutual fund companies, which are approved by the Internal

Revenue Service; and provided further that the third person is notified that legal and tax consequences in such plans vary in particular cases and that the third person should consult his attorney. That's reasonable.

James is realistic law, a common sense step toward solving current ERISA problems. It is a better, more modern rule than a rigid interpretation of item [7] 8. on p. 769 of Turner, wherein the nonlawyer is more or less prohibited from urging his so-called client to see a lawyer (albeit, selected by the nonlawyer) in an attempt to "cleanse" the plan from the unlicensed practice of law (Op., p. 18). What if the so-called client wants to select the same lawyer that the nonlawyer selected? Not being able to have a lawyer review a pro forma/prototype plan to "cleanse it" is pretty unreasonable because it defies common sense. Lawyers do that all the time to standard AIA contracts supplied them by architects.

C. Unfair Competition Overtones.

The life insurance underwriter uses and advises on certain forms which are not considered the practice of law, such as a simple change of beneficiary to a policy. Yet, this simple form can have a profound effect on probate, estate taxability, and appropriate spousal waivers under the Retirement Equity Act of 1984. So where is the line to be drawn? It almost has to be drawn on a case-by-case, document-by-document basis.

Not being able to use prototype plans even with lawyer review is, as a practical matter, unworkable in the world of commerce. If certain stores can sell legal forms; certain financial institutions and life insurance companies can distribute forms; and certain stockbrokers can use and advise on forms supplied them by their brokerage houses, then it is possible that undue restrictions on other nonlawyers in today's world could result in Court sanctioned unfair competition.

The IRS forms designated as the "5300 Series", an application for determination for defined benefit plan and for defined contribution plan, may be completed by a "currently qualified attorney"; and such nonlawyers as a certified public accountant; enrolled actuary; or a "representative" who is currently enrolled to practice before the IRS and is authorized to represent the employer or plan administrator. Portions of the instructions to complete said forms are attached as an Appendix hereto.

If anything, the options available to the employer in choosing and implementing a plan have been restricted by ERISA and subsequent laws (TEFRA; DFRA; REA; TAMRA; TRA-86; COBRA; & OBRA), *so* that the choices available in the pension plan process are far simpler now than in the pre-ERISA environment. Maybe that's why the foregoing IRS form authorizes by preemption of state law, certain nonlawyers to do the work. It may just boil down to a case of everyone (lawyer, nonlawyer, employer,

employee, IRS, and the Courts) trying to cope with the rapid change in the subject; the large amounts of money involved: and the blizzard of paper surrounding those changes.

Helpful references to unlicensed practice of law and the struggle to deal with forms may be found in 53 ALR 2d 788 related to UPL considerations of real estate agents, brokers, and managers: immigration forms and UPL in the ABA/BNA Lawyers Manual, p. **804**, citing The Florida Bar v. Marino - Santana, 322 So.2d 13 (Fla. 1975).

In 7 Am.Jur.2d, Attorneys, UPL, Sec. 101 states that "the character of the act done . . . is the decisive factor in determining . . ." the practice of law. That is a pretty good corollary to the Sperry rule on UPL.

It doesn't seem reasonable to answer the Bar's question in the affirmative when it is limited to "advice" (not legal advice). Employers who struggle to fund plans; and employees who not only benefit from them, but who also struggle, do so for one purpose, namely: to better secure the future for themselves and their posterity. These people should at least be able to get advice from a broad range of sources.

ISSUE 11. SPECIFIC CONSIDERATIONS

A. Because of the nature of pension plans and the extensive federal legislation in the field, it would be detrimental to the administration of plans to answer The Bar's question in the affirmative.

A "pension plan"[1/] means any plan, fund, or program maintained by an employer or an employee organization, or by both, which (1) provides retirement income to employees, or (2) results in a deferral of income by employees for periods extending generally to the end of employment or beyond, regardless of how benefits are distributed.[2/] These plans become "qualified" by meeting numerous requirements of the Internal Revenue Service which are constantly being deleted, modified and amplified through tax legislation and the Service's own interpretation of the Internal Revenue Code and the Regulations thereunder.

By receiving the status of a "qualified pension plan" the plan is afforded special tax treatment such as the following:

(a) The Employer who is sponsoring the Plan or who adopts the Plan is allowed an immediate tax deduction for the amount contributed to the plan for a particular year [I.R.C. Section 4041;

[1/] As used in this Brief, the term "pension plan" means all qualified retirement plans, including, but not limited to, pension plans, profit sharing plans, target benefit plans, cash or deferred plans and employee stock ownership plans.

[2/] ERISA. Section 3(2).

(b) Participants pay no current income tax on amounts contributed by the Employer on their behalf [I.R.C. Sections 402 and 403];

(c) Earnings of the plan are tax-exempt, allowing tax free accumulation of income and gains on investments [I.R.C. Sections 401 and 501];

(d) Reduced tax rates may be applicable to certain lump-sum distributees [I.R.C. Section 402(3)];

(e) Income taxes on a partial or lump-sum distribution may be deferred by rolling over the distribution to an individual retirement account (IRA) or to another qualified retirement plan (I.R.C. Sections 402(a)(5), 402(e)(4) and 403(a)(4)]; and

(f) Installment or annuity payments are taxed only when they are received [I.R.C. Sections 72 and 4031.

On September 2, 1974, the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sections 1001-1461 (hereinafter "ERISA") was enacted into law. ERISA was passed to alleviate recognized evils in the pension field such as: (1) employees with long years of service failing to receive their anticipated retirement benefits due to the lack of plan provisions relating to the vesting of benefits; (2) the lack of funding in existing plans to pay employees their promised benefits; and (3) termination of plans by Employers before enough funds had been accumulated to pay employees and their beneficiaries promised retirement benefits.

Both the Treasury Department, through the Internal Revenue Service, and the Department of Labor have concurrent jurisdiction to apply and enforce ERISA.

The primary purpose of ERISA is to protect the interests of employees and their beneficiaries.[3/] The act established a new set of uniform rules for participation in pension plans, added mandatory vesting schedules, fixed minimum funding standards, set fiduciary standards in administering the plan and handling plan assets, required disclosure of plan information, and the enacting of a system for insuring the payment of pension benefits.

But this piece of legislation was just the beginning of the Congressional tax output. There followed, in succession, the Economic Recovery Act of 1981, the Tax Equity and Fiscal Responsibility Act of 1982, the Tax Reform Act of 1984, The Retirement Equity Act of 1984, the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1987, and the Technical and Miscellaneous Revenue Act of 1988.

Each of these laws brought changes in the pension plan arena that touched beyond the question of the ability of a nonlawyer to design or draft a pension plan. In toto, they spanned the entire operation of pension law from a plan's conception to its inevitable termination.

The Bar is asking for a clear cut reaffirmation of the case of The Florida Bar v. Turner, 355 So.2d 766 (Fla. 1978) on the one hand, while recognizing that there exists a Large gray area in what is and is not the practice of law in the pension field.

[3/] ERISA, Section 2.

They have not attempted to bifurcate the question of "plan design" from the "drafting of the plan" as a realistic, divisible area of nonlegal expertise. They have not sought to offer justifications why a master or prototype plan could be drafted by a staff attorney employed exclusively by a nonlawyer corporation but not an individually designed plan.

By seeking a simple affirmative answer to the proposed question they fail to acknowledge that the relationships and delineable boundaries of recognized professionals in the field are being squeezed by factors of time, expense and expertise.

To make a limited affirmation of Turner without dealing with the entire decision could lead to perceptual misunderstanding and interpretations by lawyers and nonlawyers. If common practices within the pension field need to be modified, a comprehensive overall examination rather than one on an ad hoc basis is called for.

B. The Bar's perception of public harm is exaggerated in regard to the design and drafting of pension plans by nonlawyers.

As stated in the Opinion, "Although the Standing Committee did not receive a great deal of testimony on the issue of public harm from lay witnesses, the attorneys did relate numerous instances where harm resulted to an employer or employee from the drafting of a pension plan by or pension advice received from a nonlawyer.[4/] No attorneys testified to any cases in which advice

that resulted in harm to an employer or employee was given to them by an attorney.

As was pointed out by most, if not all the attorneys, the cases referred to were the most egregious that they had encountered. Unless written testimony reflected documented numbers and/or studies by these attorneys, who felt obligated to participate for whatever reasons, it would seem appropriate that proof of the harm to the public should have some quantitative factor in light of the Standing Committee's desire to have the Turner case restrictively construed.

The Opinon is concerned with two areas which it relates to "public harm". The first concern deals with the issue of nonlawyer practice in the pension field being "motivated" by the sale of a product or service other than the plan itself. Citing the example of an insurance underwriter or stock broker vis-a-vis an attorney, who's independent judgment is required by the Rules of Professional Conduct, the Opinion makes no further assertions or nexus between that concern and the stated question to be determined.

Actually, all businesses are motivated by business, whether they be sole proprietorships, partnerships or corporations, and this includes professionals in the field of law. The Opinion

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[4]/Opinion, p. 4.

does not take the question beyond itself and its depth of concern seems to be reflected in its shallow inquiry.

With regard to "insurance" and in light of the Internal Revenue Service's basic restriction that insurance coverage must be incidental to the plan's retirement benefits,[5/] such factors of relevance in weighing the "independence" of a particular nonlawyer might be:

(a) What percentage of the plans implemented included insurance?

(b) Was the insurance purchased on a voluntary basis?

(c) What percentage of a plan's actual contribution went to the purchase of insurance?

(d) Does the nonlawyer company have a separate corporation from the pension company that handles the insurance?

Similarly, regarding "investments" relevant factors of indicia of independence might be:

(a) Is the nonlawyer also receiving a fee for investment management?

(b) Does the nonlawyer have a separate corporation from its pension branch that handles investments?

(c) What type of investments are offered through the nonlawyer and what type and percentage do they actually represent of the total plan investments?

[5/] See Rev. Rul. 54-51, 1954-1 CB 147; Rev. Rul. 57-213, 1957-1 CB 157; Rev. Rul. 60-83, 1960-1 CB 157, Rev. Rul. 66-143, 1966-1 CB 79; Rev. Rul. 76-353, 1976-2 CB 112.

But, rather than making an in-depth study or set parameters in which the public harm can be ascertained, the Opinion asserts that the public can be protected under the requirements of the attorneys' Rules of Professional Conduct. Certainly it cannot be saying that the sale of a product as an investment in a pension plan, however voluntarily purchased, will preclude a nonlawyer pension firm, insurance firm or brokerage firm from administering a plan, including the design or drafting of plan documents, in a manner that is beneficial to the plan's participants.

Or, the Opinion may well be arguing that the public must be protected from what they see as low-cost, low-quality service that is automatically prevented when lawyers design and draft plan documents. Such a paternalistic approach may well have been necessary in the pre-ERISA '60's and '70's when some industries were manned by agents, sales personnel and consultants with educational qualifications at high school levels. It seems, however, out of step in today's society where consumer awareness and rights have forced professionals in all fields to seek higher education and companies to hire a work force with degreed individuals.

The second area of concern of the Opinion is that nonlawyers fail to consider the effect of the pension plan on other areas of the law or the employers business. This is a legitimate concern but should not per se prevent the nonlawyer, under certain defined circumstances, from designing or drafting a plan where

checks and balances are initiated to prevent a lack of consideration of an employer's tax or business ramifications.

It is in this vein that it is proposed that a list of qualified attorneys can be obtained from the Bar, and distributed by the nonlawyer to the plan sponsor or adopter--coupled with a requirement that the nonlawyer should state affirmatively, in writing, of their lack of expertise in such fields, and recommendation that an employer seek legal advice in those tangential areas from an attorney of his choice.

Remarkably, the Opinion implies that nothing more is required than that a person be a licensed member of The Bar--an attorney--who, having passed the Florida Bar and been admitted to practice, will be qualified to consider such other tax ramifications. But it is not willing to include in this group a staff attorney who works for a nonlawyer company, and fails to suggest a more appropriate limited group such as "Board Certified Tax Lawyers".

Relative to any given set of facts and circumstances, just as a large business has a deeper reservoir of employees (and one can assume within that group a higher degree of expertise), a large law firm will have more specialized attorneys. This is not always the case, however. Law firms or practitioners with a "general practice" have no special expertise (e.g., tax law, matrimonial law, criminal law) in the field of pension law or the consequences a plan may have on a company's tax situation.

It is likely that an individual has one attorney handling all or predominantly all his legal matters, whether or not the attorney or firm is proficient in all areas of what the client needs. Does the attorney then recommend to his clients, or prospective clients, a specialist skilled in tax law? Or fearing loss of credibility or worse, loss of the client, does he do the work himself from legal forms, relying almost exclusively on a nonlawyer or a number of nonlawyer professionals for the design and possibly the drafting of the necessary documents?

Therefore, is this "independent professional judgment" of an attorney? From whom is it independent--the non-lawyer stock broker, accountant, insurance company, the pension firm and/or the actuary? The pension highway is multi-laned and it is not easy to determine solid yellow lines. The attorney is connected to the other nonlegal professions out of mutual necessity. If there is an existing public harm, present and ongoing, it would be in the best interest of the parties and the public in particular, that it be ascertained accurately through a complete and comprehensive analysis that has not been offered for the Court's consideration in the Opinion.

C. The Turner case should be construed so as not to disrupt normal business transactions by categorizing them as the practice of law, yet maintain the rightful domain of lawyers to practice law.

The Opinion relies heavily on the Turner case. This case, on its facts, involved an insurance agent who was found to have practiced law without a license. The actions of the agent took place between 1967 and 1973, which preceded the enactment of ERISA. This Court in dealing with the defendants' actions carved out eight areas as being activities which constituted UPL.

Ten years prior, this Court had determined whether certain activities of a security broker constituted UPL, enumerating a list of activities which were and were not permissible. In re: Raymond James & Associates, Inc., supra. While the James case did not discuss pension plans on the impermissible list, the Court did say, "Giving advice, directly or indirectly, to individuals or groups concerning the application, preparation, advisability or quality of any legal instrument or document or forms thereof in connection with the disposition of property inter vivos or upon death, including inter vivos trusts and wills," . . .[6/] is impermissible. The Court, on the other hand, said that within the permissible category a broker could, among other things, ". . . complete or aid in the completion of routine

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[6/] In re Raymond James & Associates, Inc., 215 So.2d 613-614 (Fla. 1968).

forms which are incidental to the Corporation's sale, purchase or transfer of securities; and complete or aid in the completion of standardized printed forms relating to the so-called "Keogh" self-employed retirement plans, provided such forms are supplied by institutional trustees or custodians, or by life insurance or mutual fund companies and are prototype forms approved by the Internal Revenue Service; and provided further that the third person is notified that legal and tax consequences in such plans vary in particular cases and the third person should consult an attorney." James, supra, at 614. Thus, the first articulation by this Court in the retirement plan field was on the permissible side of nonlawver action.

The Turner Case Analvzed:

In order to reanalyze Turner, it is necessary to look separately at the eight areas which were determined to constitute UPL. Though the solitary issue before the Court deals only with the design and drafting aspects of the Turner decision, and the Court may limit its ruling on this matter alone (like the Opinion does), it is important to speak to the entire matter for this Brief.

(1) The supplying of legal forms to others coupled with instructions or advice and/or representations as to how the forms should be filed out or the quality and effect of such forms as applied to the specific situations of others.

All business forms have legal ramifications but cannot be classified as legal forms. The Court recognized over 20 years ago in the James case that nonlawyers could complete routine forms incidental to a corporation's business.

Other industries have been allowed to draft documents, "Title insurers are permitted to prepare deeds, mortgages, satisfactions and other documents affecting legal title to be insured and perform other acts necessary to fulfill conditions described in commitments for title insurance issued by them; preparation of these documents and other acts normally constitute the practice of law and would be unauthorized if not done as a mere necessary incident to honor the title insurance commitment and to issue the policy."7/

With more regulations and federal legislation generated on an annual, never ending basis, companies are being required to have more and more forms that have become everyday items in their business operations. Forms in the pension plan industry can be obtained through government agencies, private companies like Corbel1 or drafted by private companies themselves using models

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?/Preferred Title Services, Inc. v. Seven Seas Resort Condominium, Inc., 458 So.2d 884 (Fla. App. 5 Dist., 19841.

in the industry. Most, if not all, will have plain language instructions to be used in filling out forms. The necessities of business have left this section of Turner to have been interpreted in a broad, non-restrictive manner, in light of the requirements mandated by federal legislation. The Opinion seems to have recognized this by focusing attention to the limited question of the design and draft of plan documents.

(2) Making changes in legal forms to fit a particular set of facts or meet the specific needs of others.

Business forms can always be changed or modified. What is a "legal form" was not defined in Turner, nor did the Opinion define it. It is safe to assume they would include the plan document, the adoption agreement, amendments to the plan, corporate resolutions or documents, trust documents, contracts, and any other materials that comprise the plan.

The Opinion would use the standard that a document (legal form) should be prepared by a lawyer if ". . . they affect important legal rights of the employer and employees and require that the person drafting them, and providing the advice, to possess legal skill and knowledge of the law greater than that of the average citizen." The Florida Bar v. Sperry, 140 So.2d 587 (Fla. 1962). But, corporate resolutions have historically been completed by corporate officers in their fiduciary capacity without legal assistance. Likewise, amendments to pension plans

can be as simple as changing the plan's year end or replacing a trustee. Both of these are within the capabilities of the average businessman and the standard which the Opinion offers calls for excessive knowledge in areas that could well be within the reach of the nonlawyer.

(3) The design and preparation of the pension plan for another embodying data gathered from that person.

Although the Court was clear on this point in its 1978 decision in Turner, due to the evolution of a more educated, professional group of individuals and firms in the pension industry the design (and possibly even the drafting) of the plan document by nonlawyers, should be permissible. But permissible if structured in such a way as to meet the goal stated in Brumbaugh, supra, at 1186: "the protection of the public is the primary goal in determining whether a particular act constitutes the practice of law." Sperry, supra, says this means "reasonable protection. And Brumbaugh, supra, admonishes that it doesn't mean "paterna1istic" protection.

First, assuming that the original pension plan document must be prepared by an attorney and who, as the drafter, would have final authority of plan language, there seems to be no justification in not allowing a nonlawyer firm to design a pension plan. If the presentation of the design, based on specific facts and circumstances, were limited to approval by the

attorney of the client's choice, prior to any discussion with the client by the nonlawyer, and subsequently, the attorney made a final draft document, the nonlawyer could then discuss the administration of the plan under its specific clauses. While the Opinion recognizes that the attorney, based on his degree of proficiency in pension law, may or may not seek advice from the nonlawyer in plan design, it would be against this suggestion--where plan design initiates at the nonlawyer's office before legal advice is obtained. Yet, to be rigid in this area would be to lose the free flow of knowledge between different professional groups attempting to use their disciplines, presumably, to the same end. It is offered that this viewpoint would be a ;positive approach to handling the gray areas that the public hearing brought out. It may be a needed step beyond what the Court said in Turner that, "A layman, who gives actuarial, accounting, economic, insurance, and investment advice in reference to designing, drafting and adoption of a pension plan, without rendering of legal advice or legal services, is not engaged in . . ." UPL.[8/]

Another realistic approach, albeit a more liberal one, would be to allow a nonlawyer firm, with a member of the Bar on its staff, have its attorney-employee draft plan documents or amendments but always with the suggestion that the third person

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[8/] The Florida Bar v. Turner, 355 So.2d 766 (Fla. 1978).

could seek an attorney of his choice to review the documents. The Opinion states than an attorney-employee may draft a master or prototype plan for his company.?/ This was the first recognized by the Court in the James case with regard to Keogh prototypes being able to be completed by a layman. Moreover, the company may sell the plan in the same manner as the sale of a "kit".[10]/

The Opinion then attempts to differentiate between a master or prototype plan and an individually designed plan so as to justify why a nonlawyer, including a company with an attorney-employee, could draft and design one but not the other.

The types of plans, master or prototype and individual, are not different in the procedure of applying to the Internal Revenue Service for qualification. Though the forms and cost of the application differ, each must be approved and operate on a yearly basis meeting all the requirements of the pension laws. And, each basically will have a great deal of the same language, with more options and flexibility of choice in the individually designed plan.

A master or prototype plan may or may not have options that can be selected. Using the erroneous thinking of the Opinion if

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[9]/Opinion, p. 16.

[10]/The Florida Bar v. Brumbaugh, 335 So.2d 1186 (Fla. 1978).

the plan had options, whether just a few or several pages worth, the attorney-employee could draft the document and apply to the Internal Revenue Service for a favorable letter of determination for the company, and no more. An Adoption Agreement would have to be made with the advice of an adopter's attorney of choice and submitted to him for IRS approval. But, what if the master or prototype had no options? This would seem to mean that no outside legal advice were needed in such a scenario and the nonlawyer firm had just designed and drafted a plan that, though inflexible, could be used by third persons. If it is accepted that an in-house attorney of a nonlawyer firm can draft a master or prototype document, approved by the IRS, where is the basic logic in claiming his inability to do the same with an individually designed plan? Especially if the facts show that the firm (a) does not advertise or hold itself out as possessing legal expertise, (b) does not have nonlawyers direct attorney-employees in legal matters and *(c)* does not rely on the practice of law for making a profit.

In The Florida Bar v. Consolidated Business and Legal Forms, Inc., 386 So.2d 797 (Fla. 1980), the Court found that a nonlawyer corporation was engaged in UPL where its attorney-employees were being controlled and directed by its nonlawyer officers, and where the nonlawyer firm established the fee to be charged for legal services provided by its attorney-employee and those fees were the only means of producing income for the company.

Therefore, is it not possible to set up standards based on the Consolidated Business case which would allow for an attorney-employee to draft and design all pension plans?

A pension company doing business in the State of Florida, with a staff member licensed to practice in the State, would satisfy the requisite skill level, and being a member of the Florida Bar, would always be subject to the Rules and Regulations of the Florida Bar. "All members of the Florida Bar shall comply with the terms and the intent of the Rules of Professional Conduct as established and amended by this Court."[11/] And, like every other lawyer he or she would be on guard so as, ". . . not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."[12/]

This would also allow the attorney-employee for the nonlawyer company to draft plan amendments, corporate resolutions, summary plan descriptions and other documents which may be deemed the practice of law.

A final suggestion would be to allow the nonlawyer company implementing a plan that was drafted by an attorney of the clients choice to draft amendments to that plan, corporate

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[11/] Rules Regulating The Florida Bar. Chapter 1, 1-10.1.

[12/] Rules Regulating The Florida Bar. Chapter 4, 4-5.4.

resolutions and the summary plan description as necessary, incidental duties to administering the plan.

The Opinion citing Rules 4-5.3 and 4-5.5 said that where a nonlawyer drafted the plan or picked the options and then had the plan reviewed by an attorney "selected by the nonlawyer" such an attempt to cleanse the action through a "cursory" review by an attorney was not sufficient supervision to render the document one drafted by an attorney.[13/] We do concede that the word "cursory" is out of place in pension plan work. But a "thorough" review is appropriate.

The selection of an attorney by the company may well taint the review process and it is agreed that an attorney selected by the client is preferable. But, the Opinion's view that an attorney, whether freely selected or not, may taint things, speaks poorly of the Bar's view of itself and of the independent ability of the legal profession to make definitive reviews of pension plans.

In the banking industry, the real estate field, and the architect/construction field, attorney reviews of legal documents is commonplace. It should begin to be the same in the pension arena as well.

[13/] Opinion, p. 18.

(4) The submission of a pension plan to another for adoption and/or implementation coupled with the representation, direct or indirect, that the plan is suitable to the person's particular circumstances, needs and objectives.

It is certainly not inconceivable that a pension plan may be implemented by an employer which is not suitable to them based on circumstances and needs. But these factors are business-related and not primarily legal issues. Nor can it be assumed that the client's own CPA or accountant would not have been consulted. Or for that matter, his attorney. As stated throughout this Brief, if certain checks and balances are followed, this may be an area where the nonlawyer can play an active rather than passive role beyond motivation and information gathering.

(5) Advising another that a particular plan qualifies for tax benefits under the Code, revenue rulings and court decisions.

No pension firm, insurance company, and certainly no law firm can guarantee a pension plan's qualification until the application has been submitted to the Internal Revenue Service and returned as being approved per a favorable letter. This initial qualification under 29 U.S.C. Sections 1201-1204; 26 U.S.C. Section 1, et. seq., however, is not mandatory.

Generally, a plan will be submitted for qualification, but it is clear that there is absolutely no requirement that the submitter be a lawyer in order to file the appropriate Form 5300, 5301 or 5307. (See Appendix).

Here, the Opinion citing Sperry, supra, says that since it entails providing a service that affects important legal rights of the employer, it constitutes the practice of law and must be handled or supervised by an attorney.[14]

It is in this section the Opinion recognizes the realities of the industry and regulations therein. It agrees that a nonlawyer may obtain specific authorization to present a plan to the Internal Revenue Service.[15] In fact, after an employer has authorized the representation through Form 2848-D, the IRS will accept submission by the authorized representative. This Power of Attorney allows the employer his choice of who can file the material with the government and correspond as to any further data that is needed, or modifications that are mandated for plan approval.

By using the language ". . . or supervised by an attorney" the review of the final submission package would seem to be sufficient to protect the rights espoused.

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[14] Opinion, p. 19.

[15] The Florida Bar v. Sperry, 140 So.2d 587 (1962), 373 U.S. 379 (1963).

(6) Rendering an opinion or giving advice, either directly or indirectly, regarding the consequences or effect of the tax laws.

A pension firm, insurance company or other nonlawyer should under no circumstances offer legal advice and should always recommend that an employer should seek legal counsel from his attorney. However, it does not follow that it should be (nor is it) prohibited from writing to its clients of changes in the law generally, and that such changes should be discussed best with their attorney. This, of course, pre-supposes that the employer has an attorney who is currently aware of the abundant new laws and regulations.

(7) The interpretation of provisions of a pension plan.

As discussed earlier, if an attorney-employee can draft a master or prototype plan, it seems only plausible that he can interpret his own language in that document. Likewise, if he can draft and interpret a master or prototype document, it is reasonable that he has the ability to understand and interpret provisions of an individually designed plan (whether or not designed or drafted by him). However, if the document was drafted by an attorney of the employer's choice, it would seem more appropriate for the nonlawyer company to defer from interpretation and recommend the employer contact the drafting attorney. This again assumes an existing or amicable relation

with the employer and the drafting attorney and the willingness of the employer to seek his advice.

Of course, an Opinion Letter could always be requested from the Internal Revenue Service by the employer through an authorized nonlawyer, but this is both a time consuming and costly process.

(8) The preparation of the legal documents that comprise or accompany a pension plan.

This area probes the heart of the question presented by the Opinion. And the Turner case should be re-examined in light of the dramatic amount of federal legislation and industry practices since this 1978 case.

The Opinion has viewed both the new laws and industry practices, chosen the fat parts of the pension cow and baptized them in the "practice of law", under the umbrella of "legal principles and rights beyond the average citizen's understanding".[16/] It acknowledges that a corporate attorney can draft a master or prototype plan, but not an individually designed plan.

Is it that an attorney-employee for a nonlawyer company has any less expertise than a lawyer practicing for the public? No. Is it that they have only the equivalence of the average

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[16/] The Florida Bar v. Town, 174 So.2d 395 (Fla. 1965).

citizen when it comes to legal principles and rights in the pension field? No.

An implicit reason for allowing the drafting of master or prototype documents, but not individually designed documents, is simply the financial consequences, accruing to the possible benefit of the Bar but maybe to the detriment of the public. There are no perceptual differences other than additional, more flexible options in individually designed plans as compared with master or prototype plans. Underlying plan documents may in fact have 80-90 percent of the same boilerplate language required of all plans of the same category. Realistically, attorneys will be able to have plan documents on their word processor with the alternative options and be able to print the required document. Or have the paralegal do so. The document may run anywhere in the $1,000 range upwards to $4,000, depending on the document and the law firm doing the design and draft.

As a prototype is already approved by the Internal Revenue Service, there would be no income to the law firm on the drafting aspect. Thus, the Opinion, recognizing and extending what the James case allowed, has allowed a corporate attorney to draft a master or prototype plan for his nonlawyer employer.

Interestingly, this State allows for the recognition of holographic wills, Fla. Stat. 732.502. They are obviously not drafted by attorneys and certainly deal with legal principles and rights under estate inheritance laws of Florida. Moreover, the

selling of "kits" in the pension field, the marital dissolution arena, and the operation of corporations has been accepted. In Brumbaugh, supra, p. 1186, the Court said the danger that some legal publications which contain sample forms to be used by individuals who wish to represent themselves might give false or misleading information is not a sufficient reason to justify a total ban on such materials; since it is assumed that most persons will generally use publications for what they are, in preparation of their cases. And this will not rely on those materials in the same way as they would rely on the advice of an attorney or other person holding themselves out as having expertise in the area.

Corporate kits have been commonly used in the business field. Purchased through private firms, they contain legal forms such as corporate minutes, stockholder meetings, and resolutions necessary for the formal operation of a company. These do not have to be filled out by an attorney and are predominantly done by the corporate officers.

In the administration of pension plans, corporate resolutions and the Summary Plan Descriptions are necessary in the operation of the plan. If the employer has the ability to execute a resolution from a "kit" it is difficult to see why the firm administering his plan cannot prepare one for execution as well. Similarly, the Summary Plan Description which is required to be filed with the Department of Labor, is merely a synopsis of

required Plan provisions.

The required items that are necessary for inclusion are enumerated by ERISA and the Department of Labor Regulations.[17/]

It is to be in plain language capable of understanding by the average citizen. Just as the Opinion accepts filing requirements of annual returns and reports as being administrative, the filing of the Summary Plan Description is a purely administrative function guided by federal legislation and its drafting is incidental to that function and within the capabilities of the nonlawyer. Just as ERISA requires that the employee receive reports of their total accrued and nonforfeitable benefits, it also requires that they receive the Summary Plan Description. And it is as much inherent to the administration as the forms, all of which have legal rights connotations, that are prepared by the nonlawyer for circumstances of distribution (such as the joint, and survivor, and pre-retirement survivor annuity forms, waivers, and spousal consent forms).

The preparation of papers that are needed to terminate a pension plan would also fall within this area. The Opinion suggests that the procedures constitute the practice of law and require the supervision of an attorney. It is suggested here

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[17/] ERISA. Sections 102(a)/(b), DOL Reg. Section 2520.102-3; DOL ERISA Tech. Rel. 84-1; DOL Opinion No. 85-05A.

that a review by the attorney of the legal documents should be permissible as satisfying his supervisory role. Again, since the key is to have a coordinated effort among various professionals, supervision by an attorney in the form of a review process represents the most efficient solution. If the nonlawyer in charge of the administration had an attorney-employee, his review, it is suggested, should be an acceptable alternative if the employer has chosen not to have a review by outside counsel.

ISSUE 111. THE AALU POSITION

Under the Opinion, most of the customary functions provided by nonlawyers with respect to pension plans could not be continued. The Opinion would, in effect, reserve for the legal community the majority of pension planning matters currently carried out by nonlawyers.

The Opinion does not clearly articulate the reasons why it suggested such a restrictive interpretation of the UPL rules.[18/] Maybe that's because there are no real parties in interest, no facts, and no issues developed by an adversary proceedings in

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[18/] Even the American Bar Association's Standing Committee on the Unauthorized Practice of Law, in its last Opinion on the issue, took a less restrictive view of the role of nonlawyers. Opinion on Employee Benefit Planning of the American Bar Association Standing Committee on the Unauthorized Practice of Law, 159 BNA Pension Reporter R-12 (October 17, 1977) (hereinafter "ABA Opinion"). The ABA Opinion was subsequently withdrawn, apparently because of a decision not to issue opinions in this area.

this case. But the Opinion indicates that unless it is adopted, there is a substantial likelihood of "public harm". In this regard, it notes that lawyers are required to follow the Rules of Professional Conduct as part of the attorney/client relationship and that a nonlawyer may fail to consider the effects of a pension plan on other areas of the law or on the employer's business. The Opinion also suggested that there was substantial concern that a nonlawyer may be motivated by the sale of a product or service.[19/] While this suggestion has some validity, that motivation is not restricted to nonlawyers and can be adequately coped with by the consumer without his life being excessively altered.

But the members of AALU are not remotely interested in giving legal advice, already defined by this Court in Sperry, supra.

The Opinion should not be adopted. As proposed, its restrictive nature on balance would cause more "public harm" than it would avoid. The Opinion's misperception is apparently based on a failure to appreciate fully the broad range of concerns confronting an employer or other person seeking pension expertise. Further, it fails to recognize the necessary and important role of nonlawyers in pension planning after the

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[19/] See The Florida Bar v. Turner, 355 So.2d 766 (Fla. 1978).

passage of the Employee Retirement Income Security Act of 1974 ("ERISA").

The rationale for rejecting the Opinion is set forth below.

A. Each employer or other person seeking assistance in designing, adopting, maintaining or termination a pension plan has the right to decide, when fully informed, whether or not to utilize the services of a lawyer.

The right of each person to represent himself in his own affairs, whether legal or not, is incontrovertible.[20/] Thus, an employer may, if it *so* chooses, decide to design, draft, implement and administer its own pension plan without the assistance of a lawyer and such action would not constitute UPL. In fact, many nonlawyer employers choose to represent themselves in part or all of the pension planning process, not to mention the many other business facets.

An important corollary to this basic principle is that each person should have the right to select those who will assist him in performing the services for himself so long as he understands that any nonlawyer he selects is just that--a nonlawyer. The self-servicer should be very clear that he is not receiving the assistance of a lawyer and will not have the benefits provided by such assistance. Not only should an employer or other person have the right to decide whether to seek the advice of a

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[20/] See the ABA Opinion at Section XII.

nonlawyer concerning a pension plan, the selection of a nonlawyer may, in fact, be a highly rational choice for many reasons, including, but not limited to, the greater expertise of the nonlawyer.[21/]

B. The decision to seek or reject legal assistance involves cost/benefit balancing which often supports rejection.

The Opinion emphasizes the advantages available to an employer or other person in seeking pension advice from a lawyer. Two advantages are cited--the lawyer's training in legal affairs and the fact that the lawyer is subject to the Rules of Professional Conduct.[22/]

While it is true that the lawyer is trained in the conduct of legal affairs and is an expert in providing legal advice, it does not necessarily follow that legal training is of indispensible relevance to pension planning. Most lawyers, in fact, have little, if any knowledge of pension planning and little if any knowledge of tax matters, both of which are important to proper pension planning. In fact, most law schools do not offer courses on pension planning. While most law schools

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[21/] Note that the Employee Retirement Income Security Act of 1974 ("ERISA") specifically requires that nonlawyers such as actuaries and accountants perform certain functions for pension plans.

[22/] Opinion at 4-5.

do offer courses on federal income tax, those courses are rarely taken beyond basic levels. Advanced tax courses, even when available, generally do not consider the tax issues relevant to pension plans.

In addition, while lawyers may have expertise in drafting many forms of legal documents, including trusts, they generally do not have the expertise relevant to tailoring these documents to the particular needs of pension plans. Certainly there are lawyers possessing meaningful pension skills--skills that are more than adequate to the needs of those seeking pension assistance. But in a vast array of situations, the experienced nonlawyer is better prepared in this area than the typical general practitioner attorney, the kind of attorney whose services would tend to be utilized by most small and medium sized businesses.

The other factor cited by the Opinion that militates in favor of an employer utilizing a lawyer in pension planning is that the lawyer is subject to the Rules of Professional Conduct. Accordingly, the employer is assured of all the rights of attorney/client privilege, and the right to seek disciplinary action against the lawyer. This extra protection, however, is a benefit that an employer could justifiably decide is not necessary to it in the conduct of its business affairs. An employer might determine the the greater expertise available from a nonlawyer (such as an actuary, life insurance agent or

accountant) might outweigh any benefits obtained from seeking legal assistance. Therefore, the employer could, as a rational business decision, choose not to seek the advice of a lawyer, but to proceed to design and implement a pension plan on the basis of advice (not legal advice) received from a nonlawyer. Not only might the employer feel that the additional consultation of a lawyer is unnecessary, but it might also decide that the cost savings inherent in not seeking legal advice might well justify the potential shortcoming from the loss of both confidentiality and availability of disciplinary proceedings under the Rules of Professional Conduct.

C. Pension planning is a specialty that involves many disciplines and need not be unreasonably dominated by lawyers.

The Opinion rightfully recognizes that pension planning is not entirely a matter for lawyers. And AALU recognizes the field is not entirely a matter for nonlawyers. But the Sperry case says that the "reasonable protection" of rights and property of those (clients) advised is the standard to be applied in advice and performance of service. Unreasonable protection; over protection; paternalism; and a sheltered existence are not required or desirable.

Pension planning necessarily involves accounting, actuarial and investment decisions.[23/] Many of these are areas in which a lawyer will not have the proper qualifications to advise the

employer. Therefore, it is necessary that nonlawyers have a role in any pension planning. It is inappropriate to suggest that this process must be dominated by any one advisor, whether lawyer or nonlawyer. This decision of whether to use a lawyer or a nonlawyer as the sole or dominant participant in the pension process (encompassing as it does the trade-off of various cost/benefit factors) is one that should be reserved, under appropriate safeguards, solely for the employer or other person seeking assistance. If anyone should dominate this field, it should be the employers who fund it with hard earned dollars, together with the employees and their beneficiaries who are really the protected class (Op., p.3).

D. Nonlawyers providing assistance to an employer or other person with respect to a pension plan should inform the person of the considerations involved in failing to seek the advice of a lawyer.

The extent to which a lawyer or nonlawyer has a role in pension planning is most appropriately determined by the employer or other person seeking to find someone to fill that role. That employer, however, should not be misled in making its

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[23] Defined benefit plans require actuarial design assistance. See §103(d), ERISA. Accounting issues significantly affect pension planning decisions. See Statement of Financial Accounting Standards Nos. 97 and 98. Investment decisions are critical to both pension plan design and fiduciary responsibility. See §§401(a) and 404(c) of ERISA.

determination of whether to proceed without the advice of a lawyer. The employer or other person making the decision should be adequately informed. A nonlawyer, if his participation in the pension process is not to be considered UPL, should be required to provide notification to the employer that he is in fact not a lawyer and that proceeding without the assistance of a lawyer could have serious detriments. Disclosures on sample documents suggesting the employer seek review by legal counsel have become common practice.

This disclosure is most appropriately made though a written document that would contain notification to the employer from the nonlawyer that the advisor is not a lawyer and that the employer should consider seeking the advice of a lawyer. The document should also disclosure that, if the employer proceeds without legal assistance, it will not have the advantage of the attorney/client privilege and any information provided to the nonlawyer will not be subject to the same confidentiality protections that are applicable if the information were provided to a lawyer. Further, the document should disclosure that, while the nonlawyer may be subject to sanction under the qualifying or licensing body of his own profession, the employer would not be able to seek sanction from The Florida Bar for misconduct.[24/]

[24/] The concept of disclosure has been accepted by the Department of Labor as a critical method of protecting pension plans. See, e.g., Prohibited Transaction Exemption No. 77-9.

The professional liability of an attorney for negligence or malpractice in civil litigation tends to exceed substantially that of any other profession whose practitioners would likely be involved in pension matters. The nonlawyer should be required to add this fact to the information to be disclosed.

This disclosure should be required of every nonlawyer who assists the employer in the design, implementation, administration or termination of a pension plan. If any nonlawyer provides documents or other written materials relating to a pension plan, the documents or other written materials should contain a similar disclosure and should suggest that the employer seek the review of a lawyer.[25/]

If after this disclosure the employer still seeks to go forward with the services only of the information-disclosing nonlawyer, that nonlawyer should not be subjected to the allegation that he is violating the UPL rules in the State of Florida. This decision by the employer is then an informed, rational choice based on a consideration of the issues involved. And it is no more disabling, likely less disabling, to the employer than a decision to proceed by itself without any help--a course of action that no one challenges in the UPL context. It also would meet the standard of "reasonable

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[25/] Furnishing "draft or suggested" documents was expressly permitted by the ABA Opinion. See the ABA Opinion at Section IX.

protection" of the advised in Sperry.

E. Failure to conform Florida UPL rules to modern pension practices will create substantial public harm.

Designing, implementing, administering and terminating pension plans has become a highly specialized field in which lawyers are only one of many expert groups available to provide assistance to employers and others seeking advice. Lawyers, consultants, accountants, life insurance agents, actuaries and others have a necessary and important role in pension planning. The expertise required cuts across a variety of fields, none of which can be dominated by any one expert. Input from the various fields of expertise is often necessary in order property to advise an employer concerning a pension plan.

The lawyer can serve a highly useful, but not indispensable, role in this process. The most critical factor in the process is pension expertise, not legal expertise. To require the omnipresence of a lawyer, even though the employer may validly and rationally conclude that it wishes to proceed without legal assistance, would result in substantial restrictions and hindrance to proper pension planning. Not only would the employers often experience increased cost (from having to pay a lawyer to review the work done by another expert who, in fact, may be even more expert than the lawyer himself), but the willingness of employers to proceed with pension plans may be

seriously undermined. Employers may be reluctant to move forward with a pension plan matter if proceeding necessarily requires the addition of a lawyer when neither legal expertise nor legal responsibility is, in the employer's judgment, vital to the process.

There is no contesting the validity of the assertion that nonlawyers should not be permitted to practice law. This holds as true with respect to pension matters as it does for any other endeavor. However, it is also true that no one should be required to utilize the services of a lawyer if the decision to use a nonlawyer is premised on full access to knowledge of the benefits that could result from using the services of a lawyer and of the detriments that could result from using the services of a nonlawyer. If an employer determines for any reason (e.g., the training and skills of a lawyer are not necessary; the cost of legal services is excessive in relation to the benefits to be received; the special lawyer-based liability protections are inappropriate to the risks entailed) to proceed without an attorney's services, it should be free to do so. If, as is true, the employer can perform the pension functions itself without invoking UPL issues, it should be able to employ the help of nonlawyers in that self-service exercise.

To require the omnipresence of a lawyer in all pension plan matters and would be to burden the process and, therefore, risk causing employers who might otherwise maintain pension plans to

fail to adopt such plans or to abandon existing plans. This clearly would be to the detriment of those employers and the many employees who would benefit from these plans.

CONCLUSION

Accordingly, the Opinion should not be adopted. Or it should be modified to provide "reasonable protection" to the public, not paternalistic protection in the modern pension plan environment.

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