IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 74,479

FILED

By Deputy Clerk

In re THE FLORIDA BAR:
PROPOSED ADVISORY OPINION
RELATING TO NONLAWYER
PREPARATION OF PENSION PLANS

RESPONSIVE BRIEF OF FLORIDA BANKERS ASSOCIATION

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RESPONSIVE BRIEF OF FLORIDA BANKERS ASSOC.

The Florida Bar has taken an **"all** or nothing" position in its consolidated Answer Brief to the Initial Briefs filed by interested parties in this proceeding. That position may be efficient in dealing with so many petitioners representing such a wide array of interests and activities, but it does not help the Court in fashioning an advisory opinion which protects the public without unduly limiting access to the social and economic benefits of employer-sponsored pension and profit sharing plans.

In fact, The Florida Bar addresses its Answer Brief to the _ability_ of the Florida Supreme Court to regulate the practice of law in the area of plan drafting and adoption. Florida Bankers Association recognizes that many petitioners challenged this authority on grounds of federal preemption of the field, antitrust legislation and first amendment concerns, but the Florida Bankers Association respectfully submits that the most significant concern is the one raised in its Initial Brief: _Should_ the Court exercise its ability to regulate the practice of law so as to prevent the use of master or prototype plans? The Florida Bar has not addressed that issue at all.

In a forty-two page brief, The Florida Bar addresses the policy behind adoption of the Proposed Advisory Opinion in only two pages. The Florida Bar acknowledges the inability of The Bar to meet the need for services, and goes on to acknowledge the

goal and policy of regulation of the practice of law--to protect the public. What The Bar does not do, because it cannot, is identify the danger posed to the public by the implementation of prototype or master plans by banks. The Bar cites to the testimony of "several witnesses [giving] not only examples of public harm but also the propensity for public harm." [Answer Brief at 40.] Review of the citations will demonstrate that not one of those "examples of public harm" arose from the implementation or administration of a prototype or master plan by a bank trust department. Moreover, the record before the Court bears witness to the widespread and long established practice of banks and trust companies offering this service, yet the record is devoid of a single complaint arising from this practice. Surely if the propensity for harm existed, there would be evidence of it other than the testimony of attorneys who see their client base eroded by the practice they seek to prohibit.

The Florida Bankers Association has asked the Court to fashion an opinion that meets the Court's responsibility of protecting the public without unduly limiting the public's access to services otherwise beyond their means. As pointed out in its initial brief, the Court has recognized that in some circumstances it is appropriate for non-lawyers to engage in activities that technically speaking may constitute the practice of law. The Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980). The courts have recognized the propriety and social

utility of allowing non-lawyers to provide limited legal services in other contexts, such as title insurance, Preferred Title Services. Inc. v. Seven Seas Resort Condominium, Inc., 458 So. 2d 884 (Fla. 5th DCA 1984), and court clerks assistance in preparing and filing documents in simplified court actions, The Florida Bar re Amendment to Rules Regulating the Florida Bar (Chapter 10), 510 So. 2d 596 (Fla. 1987).

As noted in the Initial Brief of the Florida Bankers Association, the prototype or master plans are pre-approved by the IRS and, in any case in which tax benefits may be affected by choices made, the completed Adoption Agreement is reviewed by the IRS. The potential danger to the public posed by these plans is minimal. The actual harm is non-existent.

Finally, the Court should recognize that relegating the implementation and adoption of prototype or master plans to the exclusive control of lawyers is not necessarily the most efficient or effective means of protecting the public. If the public is harmed, reparation of loss is the remedy most immediately desired. Prosecuting an attorney through The Florida Bar's disciplinary procedures is likely to rank as a distant second in the priority of concerns of an injured client. As between bank and trust companies and attorneys-at-law, the ability to make meaningful reparation is more likely to lie with the bank.

In short, the Florida Bankers Association has invited the

Court to exercise its authority in the best interest of the public by making rational distinctions among the multitude of practices which The Florida Bar seeks to prohibit. The Florida **Bankers Association asks the Court to authorize banks and trust** companies to continue to offer prototype or master pension or profit sharing plans as an ancillary service of the business of banking.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished by 1st class mail, postage pre-paid, this 11th day of January, 1990, to all parties listed on the attached Service List.

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