

FILED
SID J. WHITE
JAN 6 1992
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE 79,084

THE FLORIDA BAR

IN RE: Advisory Opinion--Nonlawyer Preparation
of and Representation of Landlord in
Uncontested Residential Evictions

COMMENTS ON PROPOSED UPL OPINION

Respondent HENRY P. TRAWICK, JR. files the following comments in this proceeding.

1. Respondent is a member of The Florida Bar.
2. Respondent agrees with the position taken by the Standing Committee on Unauthorized Practice of Law with the following exceptions:

- (a) There appears to be an implication that only the statutory three day notice of eviction for nonpayment of rent can be prepared by a nonlawyer. The statute is § 83.56(3) Florida Statutes. If the Committee intended to make a distinction between the failure to pay rent and the other termination notices provided by the statute, respondent disagrees with this position. A nonlawyer should be able to give any notice under § 83.56 Florida Statutes.
- (b) A distinction is made between residential and nonresidential tenancies in the proposed opinion even though it deals only with residential evictions. That difference results from the omission of language from § 83.56 Florida Statutes similar to that appearing in § 83.21 Florida Statutes that says "The landlord, his attorney or agent..." The question of whether an act constitutes the practice of law is a judicial question, not a legislative one. Accordingly, the legislature has no authority to permit a nonlawyer to practice law. This being so, respondent submits that the difference in language between the two statutes is immaterial. Incidentally, the "attorney" referred to in the statute has been historically taken to mean an

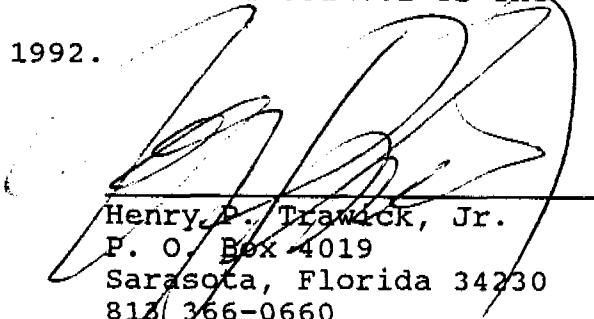
attorney in fact, not an attorney at law.

3. The Florida Bar is trying to implement a concept that may be commendable by permitting nonlawyers to consult with persons in connection with the completion and execution of what are clearly legal forms. Respondent recognizes that he is "swimming against the tide", but the attempt can be analogized to giving an unlicensed driver of tender age an automobile with the keys to it and telling him how to start it without any additional instructions. The practice of law is not a science. Similar factual situations do not call for the same responses. In one of his more humorous remarks, George Bernard Shaw referred to acting and another profession as the two oldest in the world that were "ruined by amateurs". In this case the ruin will be expensive to the amateurs.

4. Respondent has been told that this Court's approval of Form 1, the form of a one year lease, submitted by The Florida Bar in case 77,737 has not been approved pending the determination in this proceeding. Neither the form submitted earlier nor the form submitted by the Real Property Section are appropriate for the purpose if this Court is inclined to approve a form at all. Executing a lease is a more complex legal problem than many are willing to concede. It is a simple thing to complete a form that contains blanks once the judgment decision has been made that the language is appropriate for the particular lease. This applies to a one year lease as it does to a fifty year lease. Of course, a fifty year lease will contain many more provisions because of

the length of the term, but the underlying decision about what the form is to contain requires the application of a professional judgment that cannot be reduced to completing blanks in a form.

The undersigned certifies that a copy of the foregoing has been furnished to Lori Holcomb as assistant UPL counsel of The Florida Bar by mail on January 3, 1992.



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