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August 13, 1991

Ms. Lori S. Holcomb
Assistant UPL Counsel
The Florida Bar
630 Apalachee Parkway
Tallahassee, FL 32399-2300

Re: Property Manager Unlicensed Practice of Law Hearing

Dear Ms. Holcomb:

Thank you very much for taking the time to speak with me on Thursday, August 8, 1991, regarding the public hearing scheduled in Tampa for September 5, 1991. This letter is submitted as my written testimony to the Committee prior to the time of the hearing.

I understand the Committee is considering the issue of whether it constitutes the unlicensed practice of law for a property manager, with or without a power of attorney, to draft and to serve a Three Day Notice, draft and file a Complaint for Eviction and Motion for Default and obtain a Final Judgment and Writ of Possession for the landlord in an uncontested residential eviction and, if so, whether the practice should be authorized.

My testimony is prepared from my perspective as a practicing attorney who does quite a bit of landlord and tenant work, particularly residential evictions on behalf of a property management company. I was quite surprised to learn that certain judges may be aware that non-owner, non-attorneys were not permitted to initiate the preparation of and/or filing of Complaints for Eviction, or Motions for Default or Motions for Final Judgment and Writs of Possession. In my opinion, the current law presently prohibits non-attorneys who do not own the property in question from undertaking such acts. In fact, if a non-attorney undertakes such acts on behalf of an owner in Pinellas County, the judge is very likely to impose sanctions at a hearing scheduled sui sponte by the Court. In fact, I am aware of one case where the tenant reported the property manager to the judge and the judge was extremely upset by the practice. Accordingly, it is my opinion that drafting and filing a complaint, moving for default and moving for a final judgment and Writ of Possession clearly constitute the unlicensed practice of law acts. Further, I believe very strongly that such practice is not in the best interest of the community and should not be authorized.

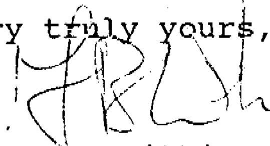
I believe the practice should not be authorized because it is virtually impossible to predict which defendants will respond by filing an answer pro se or by obtaining legal counsel from the local legal aid group. In either of those circumstances, the case before the Court is virtually guaranteed to be a mess. The owner of the property will not be well-served, and neither will the court system or the public.

Conversely, I do not believe that either the preparation or delivery of a three-day notice constitutes the practice of law. I believe that it is good practice to obtain a properly-worded notice from an attorney, at least initially. But once a person has in their possession a validly prepared and properly-worded form of notice, I see no reason why anyone can't validly fill in the appropriate factual information and deliver that notice to the tenant, as long as the delivering person is an agent of the owner.

Therefore, if the Standing Committee on the Unlicensed Practice of Law of The Florida Bar feels it is appropriate to provide affirmative guidance in this area, I suggest the Committee conclude that the preparation and delivery of a three-day notice is clearly not the unlicensed practice of law and that such practice should be authorized for any agent of the owner and, further, conclude that preparation and/or filing of a Complaint or a Motion for Default or a Motion for Final Judgment and Writ of Possession are clearly the unlicensed practice of law and should not be authorized by any non-attorney, regardless of whether a power of attorney has been granted.

If you would like further information or if you have any questions, please do not hesitate to contact my office.

Very truly yours,



G. Barry Wilkinson

GBW:dt

cc: S & R Enterprises Realty
and Property Management, Inc.