
IN THE SUPREME COURT OF FLORIDA

Case No. SC14-1730

Formal Advisory Opinion #2014-3 of
The Florida Bar Standing Committee
On the Unlicensed Practice of Law In Re:
Scharrer v. Fundamental Administrative Svcs.

**PROPERTY CASUALTY INSURERS
ASSOCIATION OF AMERICA**

FLORIDA INSURANCE COUNCIL

AMERICAN INSURANCE ASSOCIATION

**NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES**

REPLY OF INTERESTED PARTIES

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REPLY OF THE INTERESTED PARTIES

THE COURT’S OPINION SHOULD STATE EXPRESSLY THE FLORIDA BAR’S CONCESSION THAT THE ADVISORY OPINION DOES NOT APPLY TO INSURERS AND THEIR INSUREDS.

The following four insurance industry trade organizations previously filed consolidated comments on the Proposed Advisory Opinion (“PAO”) as interested parties: the Property Casualty Insurers Association of America (PCIAA), the Florida Insurance Council (FIC), the American Insurance Association (AIA), and the National Association Of Mutual Insurance Companies (NAMIC). These interested parties set forth detailed analysis of the existing statutory and regulatory structure authorizing the manner in which the insurance industry participates in litigated matters in Florida courts. [Insur. Comments at 7-17] These parties also argued that this Court should reject those portions of the PAO suggesting that the unlicensed practice of law might occur under facts not alleged in the underlying complaint (pages 9-10 and 13-16), because such speculation is not within the scope of these proceedings. [Insur. Comments at 19-22] Likewise, these parties urged the Court to reject those portions of the PAO that suggest a case-by-case analysis of the degree of management exercised by non-lawyers in cases where the relevant party is represented by a Florida-licensed lawyer. [Id. at 21-26] These interested parties reaffirm these arguments and urge the Court to reflect these changes in its opinion.

In addition, these interested parties urge the Court to incorporate expressly in its opinion the Florida Bar's concession that the advisory opinion does not apply to the insurance industry's relationships between insurer and insured. The Florida Bar expressly stated this concession as follows:

A. The proposed formal advisory opinion does not involve the unique relationship between an insurer and their insured.

Two of the briefs filed in opposition to the proposed advisory opinion are filed on behalf of groups involved in the insurance industry. These interested parties take exception to the proposed advisory opinion on the basis that it does not recognize or is contrary to the unique relationship between an insurer and their insured. The Standing Committee agrees that this relationship is unique, and therefore, is dealt with differently than other third party relationships in the Rules of Professional Conduct. The unique relationship is not discussed in the proposed advisory opinion because the request for a formal advisory opinion did not involve insurance or the relationship between an insurer and their insured. As the relationship between an insurer and their insured was not before the Standing Committee, it was not addressed in the proposed advisory opinion. Consequently, the opinion should not be read to deal with or influence the relationship between an insurer and their insured.

[TFB A. Br. at 16-17] In light of the Florida Bar's concession, these interested parties ask the Court to expressly state in its opinion that the relationship between an insurer and its insured was not before the Standing Committee, was not addressed in the PAO, and that the opinion therefore should not be construed to involve the relationship between an insurer and its insured, including the involvement of administrators, agents, and adjusters authorized by an insurer to handle claims.

CONCLUSION

These interested parties urge the Court to state expressly in its opinion the Florida Bar's concession that the advisory opinion does not apply in the context of the insurance industry's relationships between insurer and insured, and this should include the involvement of administrators, agents, and adjusters authorized by an insurer to handle claims. Further, these interested parties urge the Court to approve that portion of the PAO recognizing that it does not constitute the unlicensed practice of law in Florida for a non-lawyer company or its in-house counsel not licensed in Florida, to manage, direct, and oversee Florida litigation on behalf of the company's third-party customers, when the management, direction, and oversight are directed to a member of The Florida Bar who is appropriately representing the customer in litigation. Finally, these interested parties urge the Court to reject the balance of the PAO, particularly those portions of the PAO suggesting that the unlicensed practice of law might occur under facts not alleged in the underlying complaint (pages 9-10 and 13-16).

Respectfully submitted this 3rd day of November, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by electronic mail to the following through the Florida Courts E-Portal, this 3rd day of November, 2014.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that these Comments were prepared using Times New Roman 14 point type, a font that is proportionately spaced and in compliance with Florida Rule of Appellate Procedure 9.210.

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