

LIEN DOCUMENTS AND THE UNLICENSED PRACTICE OF LAW

Construction Law Section

Section Chairs: William Cary Wright, Esq., Carlton Fields and Neal Sivyer, Esq., Sivyer Barlow & Watson, P.A.



Nonlawyers may not draft a claim of lien or a satisfaction of claim of lien.

If your construction clients are having employees or other nonlawyers prepare notices of commencement, claims of lien, or satisfactions of liens without your assistance, they are enlisting those preparers in the unlicensed practice of law.

It constitutes contempt of the Supreme Court of Florida and a third degree felony for a nonlawyer

to practice law, including giving legal advice, drafting legal documents, or providing legal services. The practice of law is defined as follows:

It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.¹

Nonlawyers may not draft a claim of lien or a satisfaction of claim of lien, because (1) they require a legal description of the property; (2) they establish rights with respect to the lien, its duration, renewal information, and action to be taken on it; and (3) the claim of lien also acts as an encumbrance on the property until it is satisfied.²

In addition, nonlawyers may not draft notices of commencement because they (1) affect legal rights, and (2) could cause serious legal and financial harm to the property owner if not completed or prepared.³

Continued on page 19



Joe Simmons of API (middle) with Leo Gomez and Alex Fiol

VEELO.COM

VIRTUAL ENTERPRISE ELECTRONIC LAW OFFICE



Fiol, Gomez & Blackburn, a full-service personal injury law firm, has used Veelo for its time and billing since the firm began.

"From the time we started our practice we've relied on Veelo to maintain our records and statements," said Alex Fiol. "We definitely feel that the professional services rendered by the staff at Veelo has added value to our firm."

Veelo.com provides outsourced time and billing services to attorneys from solo practitioners to large multi-office firms.

201 E. Kennedy Blvd., Suite 850, Tampa, FL 33602
Tel: 813-221-0376 Fax: 813-221-0380



Fully functioning time and billing software package
Bookkeeping Services ■ Training ■ Backup ■ Easy to Learn ■ Easy to Use
Redundant systems insure security & disaster recovery
Access to a large professional accounting staff -- at a fraction of the cost of having your own!
One low monthly fee.

Continued from page 18

There are many other lien documents, including affidavits, waivers, and releases, that require a legal description of the property; establish rights with respect to the lien, its duration, renewal information, and action to be taken on it; act as an encumbrance on the property until it is satisfied; affect legal rights; and could result in serious legal and financial harm to property owners if not completed or prepared accurately.

In response to an inquiry regarding other lien documents, one Florida Bar attorney acknowledged that, while there are no cases on point, the above case provided the following guidance:

The Supreme Court of Florida found that certain activities

performed by nonlawyers did not constitute the unlicensed practice of law because they were ministerial in nature. Other activities, including the preparation of a claim of lien and satisfaction of claim of lien, and activities which required the interpretation of statutes or association documents constituted the unlicensed practice of law . . . [T]he fact that the activity may be statutorily driven is not dispositive; filling out a statutorily required form may be found to be ministerial. In the latter case, the Court found that nonlawyer completion of certain statutory forms requiring only a minimum of information which could easily be obtained from the customer or the public records did not constitute the unlicensed practice of law.⁴

Without a formal advisory opinion or case law to the contrary, you should advise your construction clients accordingly and assist them with the preparation of their lien documents.

¹ *State ex rel. The Florida Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962), vacated on other grounds, 373 U.S. 379 (1963).

² *The Florida Bar re Advisory Opinion-Activities of Community Association Managers*, 681 So. 2d. 1119 (Fla. 1996).

³ *Id.*

⁴ E-mail dated April 28, 2005 from

Jeffrey T. Picker, Bar Counsel, to Andrea M. Fair.



Author: Andrea M. Fair, Weatherington, Hamilton, Harrison & Fair P.A.

TIRED OF HIRING THE WRONG PERSON?

HCBA Legal Placement
Laurie Rideout Placement Coordinator
Colleen Pruitt Placement Assistant



LET US BE YOUR
"TRAP DOOR"!

The **HCBA Legal Placement Service** personally interviews ALL candidates, administers computer testing and selects **ONLY** the top candidates.

TEMPORARY & PERMANENT PLACEMENT
PARALEGALS • LEGAL SECRETARIES • LEGAL ASSISTANTS
RECEPTIONISTS • FILE CLERKS • BOOKKEEPERS

• **RUNNERS**

813-221-7770

placement@hillsbar.com

www.hillsbar.com