

## **Joint ABA Health Plan Industry Project Proposal ERISA Plan Documentation Standards**

### **Concern Giving Rise to Project:**

Attorneys representing ERISA health plans, ERISA health plan sponsors and ERISA health plan participants have encountered situations in which the documentation evidencing the terms of such plans, or related documents such as summary plan descriptions, administrative agreements or insurance or other financing documents have failed to fully comply with ERISA documentation requirements or contain inconsistent provisions.

ABA members are concerned that this experience may reflect that attorneys familiar with ERISA documentation requirements are not always consulted during the preparation of such documents. Although attorneys may not always be consulted when health plan documents are being prepared, in almost all circumstances health insurance agents or other representatives of health plan companies are involved in the process of negotiating the terms and conditions of such coverages.

### **Concept of the Project:**

It is anticipated that discussions about these concerns involving representatives of the ERISA Bar and of the health plan industry may achieve some or all of the following:

- a. Foster Understanding Through a Mutual Exchange of Views.* At a minimum discussions between representatives of the ERISA Bar and the health plan industry should foster greater understanding of their differing perspectives.
- b. Exploration of Possible Documentation and Client/Customer Disclosure Standards.* Whether successful or not, the negotiations should explore whether standards or protocols may be developed for assuring customers/clients are advised of ERISA documentation requirements and the advisability of seeking ERISA counsel. One relevant precedent for such a protocol is the agreement reached between the legal profession and the accounting profession in the 1970's that governs the interaction of attorneys and auditors to this day.
- c. Explore Other Areas of Possible Future Cooperation.* Other areas of future cooperation should also be considered. This could include discussions concerning ERISA claims procedures and joint continuing education efforts.

### **Process/Timetable:**

- a. The Real Property, Probate and Trust Law Section's Welfare Plans Committee is prepared to take the lead in organizing this effort and will arrange monthly conference calls for this purpose beginning the first week in December.

- b. The Schedule of conference calls and the other steps to be taken will be determined during the first conference call. A tentative schedule calls for an initial ABA-only call involving interested committees or subcommittees of the Sections represented in the Joint Committee on Employee Benefits. This is not a JCEB project, so if other interested ABA entities wish to participate they will also be welcome.
- c. During the conference calls a strategy for initiating the dialogue with national associations representing insurers and other commercial health plan companies will be developed.

**How to Participate:**

If your committee or subcommittee is interested in participating in the initial conference call, please send an email to *kellypm@odnss.com* indicating your times of availability for a conference call during the first week of December. Please include: (i) your full name, address, telephone number and email address; (ii) the committee or subcommittee you represent, including the Section; (iii) your preferred times and days of availability, including the time zone; and (iv) any ideas you wish to share in advance of the call.