

Kevin Wiggins



Mr. Wiggins has practiced in employee benefits, executive compensation, and ERISA litigation for over fourteen years. In 2008, the United States Secretary of Labor appointed Mr. Wiggins to the ERISA Advisory Council, where he advised the Secretary on her functions under ERISA. Recently he was appointed as the Chair for the ERISA Advisory Council's 2010 study of Employee Benefit Plan Auditing and Financial Reporting Models. Mr. Wiggins is a graduate of Cornell Law School and the University of North Florida.

Experience

Plan Compliance

- Advise the United States Secretary of Labor on her functions under ERISA with respect to retirement plan disclosures.
- Draft individually-designed defined benefit plans from scratch and obtain IRS determination letters.
- Draft individually-designed defined contribution plans (including ESOPs) and obtain IRS determination letters.
- Draft and amend 403(b) plans and 457 plans.
- Draft and amend health and welfare plans, including cafeteria plans.
- Initiate contact with high-level personnel at the U.S. Department of Labor to assist client who had failed to file a Form 5500 audit because the client had inadvertently destroyed plan records; negotiate modified audit procedures with the Department of Labor and the plan's auditors in order to obtain a satisfactory plan audit that would close out the matter for the client.
- Represent publicly traded corporation with respect to the correction of qualified plan errors.

- Represent publicly traded corporation before the IRS on an employee plan audit.
- Represent client before the Department of Labor with respect to an investigation of delinquent contributions; advise client on Department of Labor subpoena powers with respect to qualified plans.
- Prepare governmental health plan trust.

ERISA Fiduciary Counseling

- Advise the United States Secretary of Labor on her functions under ERISA with respect to target date funds and stable value funds.
- Review and negotiate trust agreements and vendor agreements. Counsel clients on their fiduciary diligence with respect to plan fees and services, from preparation of the RFP to final implementation of all plan documents and related agreements.
- Represent client in the steel industry with respect to the transfer of trust assets to a new investment manager and custodian.
- Advise clients on compliance with ERISA Section 404(c).

ERISA Litigation

- Serve as lead outside counsel representing the PBGC in federal court.
- Serve as lead counsel on an ERISA retirement benefit claim before the United States Court of Appeals for the Fifth Circuit.
- Serve as lead counsel on ERISA health and welfare benefit claims in state and federal court.
- Serve as lead counsel on ERISA fiduciary claims in federal court.

Pension Plan Investments

- Review pension plan investments involving over \$10 million in real estate and other non-traditional investments for prohibited transaction issues, unrelated business taxable income issues, securities laws issues, and custodial issues.
- Advise private equity funds with respect to private placement memorandums offered to ERISA entities for capital commitments in excess of \$10 million.
- Opine on and establish real estate operating companies and venture capital operating companies involving over \$100 million in ERISA plan assets.
- Counsel clients on IRA investments in real estate and other non-traditional investments.
- Obtain prohibited transaction exemptions with respect to transactions involving, in the aggregate, close to \$1 billion.

Mergers and Acquisitions

- Conduct employee benefit plan due diligence for acquisition involving over \$100 million; merge numerous predecessor defined benefit plans post-acquisition into one successor plan.

- Counsel privately-held corporation being acquired by a publicly traded corporation for over \$10 million with respect to 280G issues, including preparation of all documents related to shareholder approval of parachute payments, and Internal Revenue Code Section 83 issues.
- Conduct due diligence with respect to employment agreements and equity-based compensation.

Executive Compensation

- Draft omnibus equity-based compensation plan for publicly traded corporations.
- Draft nonqualified compensation plans (including 409A plans) for publicly traded corporations.
- Negotiate and prepare numerous executive employment agreements, including in the context of dispute resolution.
- Advise publicly traded corporation on SEC reporting requirements with respect to executive compensation

Education

- J.D., Cornell Law School, 1996
- B.A., University of North Florida, 1992

Professional / Civic Activities

- Chair, ERISA Advisory Council's 2010 study of Employee Benefit Plan Auditing and Financial Reporting Models
- Member, ERISA Advisory Council, U.S. Department of Labor
- Pro Bono Attorney for Justice for Children

Bar / Court Admissions

- State of New York
- State of Ohio
- State of West Virginia
- District of Columbia

Publications / Presentations

- Presenter, "Fees, Funds & Fiduciaries: Strategies for Managing New Risks," TRA Seminar, September 2011.
- Presenter, ERISA and 403(b) Plans for MaherDuessel, Cranberry Regional Learning Alliance, July 2010.
- Presenter, "403(b) Audits are Here - You Don't Want to Ask, But You Need to Know," Pennsylvania Institute of Certified Public Accountants, April 2010.
- Phased Retirement: Retaining Skilled Workers in a Down Economy, article in the Jul/Aug, 2009 ACC Docket, Association of Corporate Counsel.

- Selected Estate Planning Aspects of 409A: A Work in Progress, New York University Review of Employee Benefits and Compensation—2008 (Alvin D. Lurie ed., 2008).
- Responding to Skyrocketing Costs: Reduce Your Health Plan Costs with Wellness Programs, HR Insight, June 2006, M. Lee Smith.
- Reducing Health Plan Costs, Mountain State Manufacturing Magazine, Winter 2005.
- IRA Real Estate Investments, West Virginia Bar Association Newsletter: The Communiqué, Spring 2005, pp. 18-19.
- ERISA and Private Equity Investing, University of Texas Hick Muse Tate & Furst Center for Private Equity, 2003 Texas Private Equity Conference (September 26, 2003).
- Estate Planning and ERISA Prohibited Transaction Exemptions, Dallas Bar Association Headnotes, Vol. 27, No. 7 (July 1, 2003).
- Capital Gain v. Ordinary Income and the FICA Tax Treatment of Employee Stock Purchase Plans, 53 Tax Lawyer No. 3 (Spring 2000).