IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 74,479

FAO #89001, NONLAWYER
PREPARATION OF PENSION PLANS

REPLY BRIEF OF COOPERS & LYBRAND ARTHUR ANDERSEN & CO., PEAT MARWICK MAIN & CO. AND PRICE WATERHOUSE

Herschel E. Sparks, Jr., Esq.
Laura F. Patallo, Esq.
HUGHES HUBBARD & REED
Attorneys for Coopers & Lybrand
Arthur Andersen & Co., Peat Marwick
Main & Co. and Price Waterhouse
801 Brickell Avenue
Miami, Florida 33131
(305) 358-1666

TABLE OF CONTENTS

TABLE OF CITATIONS

ABBREVIATIONS

The following abbreviations will be used in this reply brief:

CPA(s)	–	Certified Public Accountant(s)
DOL	–	Department of Labor
ERISA	–	Employee Retirement Security Act of 1974
Interested parties	–	Coopers & Lybrand, Arthur Andersen & Co., Peat Marwick Main & Co. and Price Waterhouse
IRC or the "Code"	–	Internal Revenue Code
IRS or the "Service"	=	Internal Revenue Service
PBGC	–	Pension Benefit Guaranty Corporation
Response	–	Responsive Brief of the Standing Committee on Unlicensed Practice of Law
Standing Committee	–	Standing Committee on Unlicensed Practice of Law

ARGUMENT

POINT I

FEDERAL STATUTES *AND* REGULATIONS AUTHORIZE CPAs, ENROLLED ACTUARIES AND CERTAIN OTHER NONLAWYERS TO PRACTICE IN THE PENSION PLANNING AREA *AND*, THEREFORE, STATES MAY NOT CONSTITUTIONALLY RESTRICT ACTIVITIES ENGAGED IN PURSUANT TO SUCH AUTHORIZATION

The Standing Committee's Response is inaccurate and inconsistent. The Standing Committee concedes in its Response that, if a conflict arises between state law and federal law or regulation, the supremacy clause of the United States Constitution invalidates local law. Response at p.15. See, Sperry v. State of Florida ex rel. The Florida Bar, 363 U.S. 379 (1963). The Standing Committee argues, however, that no such conflict exists between ERISA and the implementing federal regulations, which permit practice before the IRS, the DOL and the PBGC on virtually every aspect of pension planning, and the proposed advisory opinion because those regulations do not specifically permit nonlawyers to engage in the pension planning activities which are in dispute in this proceeding. The Standing Committee's position is unreasonably narrow, internally inconsistent and untenable because it ignores the holding in Sperry and its applicability to the pension planning process.

In Sperry the United States Supreme Court concluded that a state cannot proscribe or restrict a nonlawyer's activities where those activities are related to work that leads, or may reasonably be expected to lead, to practice before a federal administrative agency which permits nonlawyers

to practice in that forum. A nonlawyer may engage in all activities which are necessary and incidental to activities specifically permitted by federal rule or regulation, not merely, as the Standing Committee contends, those activities specifically enumerated in a federal statute or regulation. Id. at 386.

While the Standing Committee recognizes that "the general constitutional principles''articulated in Sperry "apply in other areas" it, nonetheless, attempts to distinguish Sperry by arguing that the holding relates only to patent practice. Response at p.20. The Standing Committee's attempt to distinguish Sperry on this ground is unpersuasive. Sperry deals with the same constitutional principles that are dispositive in this case. Sperry clearly articulates the principle that a nonlawyer may permissibly engage in all activities necessary and incidental to the nonlawyer's practice before a federal agency and that the State of Florida may not, under the guise of regulating the unlicensed practice of law, proscribe such activity. The Court does not limit its holding to practice before the patent office and the guidance provided is fully applicable to the pension planning process.

In further support of its argument that, in this case, state law need not yield to federal statute and regulation, the Standing Committee cites certain general language in Sperry which recognizes a state's right to regulate the practice of law. The Standing Committee's reliance on this language in Sperry is misplaced. Despite the Court's recognition that states may regulate the practice of law, as a general rule, the

Court held that states may not regulate activities of nonlawyers where the activity is engaged in pursuant to federal authority or license.

The federal regulations codified at 31 C.F.R. §10.3 **(1989)** give attorneys, CPAs and enrolled actuaries and certain other nonlawyers a "general authority" to practice before the IRS. Contrary to the Standing Committee's assertions, however, the grant is not "limited". In fact, CPA's and enrolled agents are authorized to practice before the Service to the same extent that an attorney is authorized to practice before the Service. Practice before the Service is broadly construed and includes "... all matters connected with presentation to the Internal Revenue Service ... under laws or regulations administered by" the Service and includes "the preparation and filing of necessary documents...." 31.C.F.R. **§10.2 (1989)** (emphasis added).

The authority granted by the IRS is extremely broad and encompasses all aspects of pension planning. Practice before the Service includes many activities which specifically relate to the design and preparation of pension plans, such as submission of plan documents for determinations of whether a plan qualifies for certain tax benefits under the Internal Revenue Code.[1] Contrary to the Standing Committee's

---

1 The Standing Committee recognizes that CPAs and actuaries may submit a plan to the IRS for a qualification ruling. Response at p.20. Thus, it is unreasonable and illogical to argue that preparation of the plan is not reasonably necessary or incident to the CPA's specifically authorized activity.

assertion, practice before the Service is not limited to representation of a party in a dispute with the IRS.[2]

In addition, regulations codified at 29 C.F.R. 52606.6 and 29 C.F.R. 518.34 (1989) permit nonlawyers to represent persons before the PBGC and the DOL, respectively, in connection with pension plan matters. ERISA Proc. 76-1, administered by the DOL, explicitly permits any authorized representative to practice before the DOL in connection with requests for ERISA "information letters" and "advisory opinions." Further ERISA Proc 75-1 and proposed regulations (29 C.F.R. §2570.30) which would replace ERISA Proc. 75-1 permit any authorized representative to practice before

---

2 As support for this contention the Standing Committee cites 31 C.F.R. §10.7(c) (1989) which allows persons to "prepare a tax return" ... appear as a witness, [and] furnish information" at the request of the IRS. Response pp.20-21. The fact that the IRS permits persons to file tax returns on their own behalf does not mean that preparation of a tax return is not practice before the Service or that practice before the Service only contemplates representing parties in disputes with the IRS. Clearly, many activities which the IRS regards as "practice before the Internal Revenue Service" are not activities related to a "dispute" with the IRS, e.g., a determination letter request is not a dispute. See 31 C.F.R. §10.3(d) (1989). It should be noted, too, that the Standing Committee's response is internally inconsistent. While it takes the position that under 510.7 preparation of a tax return by persons without enrollment does not constitute practice before the Service for purposes of its argument at pp.20-21, the Standing Committee later states, citing the same provision, that "practice before the IRS ... extends to individuals without enrollment as well." Response at p.22. In addition, while arguing that practice before the Service relates only to disputes with the IRS, the Standing Committee concedes that said practice includes submission of plan documents to the IRS for a qualification ruling. See n. 1 supra.

the DOL with respect to prohibited transaction exemption requests under 29 U.S.C. §1108 of ERISA.

The design and establishment of a pension plan is integrally related to a number of Code and ERISA provisions and, contrary to the Standing Committee's assertion, has everything to do with the IRS as well as the PBGC and DOL. Pension plans are governed by laws and regulations administered by the IRS, DOL and the PBGC. Thus, contrary to the Standing Committee's contention, the drafting of a pension plan does not "constitute the general practice of tax law, the regulation of which is clearly left to the states." Response at p.21. It is, instead, federal agency practice authorized by federal law and regulation and not subject to limitation or proscription by the states.

The design and establishment of a pension plan involves a multitude of nonlegal considerations such as human resource concerns, employee/labor relations, accounting, actuarial, economic or financial considerations. Further, to the extent that the design and establishment of a pension plan deals with "tax law''such activity relates to federal tax laws administered by the IRS and interpreted by the federal courts. Various nonlawyers such as CPAs, enrolled agents and enrolled actuaries are authorized and qualified by virtue of federal regulation to interpret these rules and regulations and thus this activity is federally authorized activity. Under Sperry, a state is clearly prohibited from regulating the activities of nonlawyers authorized to practice before the IRS or any other federal agency.

The Standing Committee argues that 31 C.F.R. §10.2 (1989) does not prevent this Court from adopting the proposed advisory opinion and, in fact, contends that state regulation of nonlawyer practice before the IRS in connection with pension planning is "welcome". As support for this proposition the Standing Committee cites 31 C.F.R. §10.32 (1989) which states that "nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law." The effect of such a provision was specifically considered in Sperry since the patent regulations at issue in that case contained language identical to that found in Section 10.32. Sperry, 363 U.S at 385. The Sperry court nonetheless found that such language did not permit Florida to restrict a nonlawyer patent practitioner's activities when those activities are engaged in pursuant to a federal license. State regulation of nonlawyer practice before the IRS is not merely "unwelcome", it is constitutionally prohibited. Florida may not proscribe activities specifically or impliedly permitted by federal regulation since states may not, in the exercise of their police powers, prohibit activity by nonlawyers where the activity is permitted by federal law.

Moreover, most of the activities relating to the design and implementation of a pension plan do not involve the practice of law. In addition, to the extent such activity may be classified as the practice of law, it must be recognized as permissible activity under the rationale set forth in Sperry.

The Standing Committee, while stating that drafting of plan documents is not reasonably necessary or incident to a nonlawyers' practice before the Service, fails to discuss whether plan design and the giving of advice as to the suitability of a particular plan is necessary and incident to a nonlawyers' practice before the Service, In fact, both the drafting of plan documents and the rendering of advice as to the suitability of a particular plan are activities which relate to and are reasonably necessary and incident to a nonlawyers' authorized activities before the Service. CPAs must necessarily research and advise clients on employee benefits tax issues to support not only positions taken on returns filed with the Service, but as a basis for seeking qualification rulings. In addition, nonlawyers authorized to represent parties before the DOL with regard to exemptions from prohibited transactions must also perform reasonably necessary and incident activities, including performing research and advising clients on those issues. Co-extensive with the right to advise the client in connection with any of the Code or DOL provisions which the filing relates to is the right to prepare and file necessary documents with the Service or DOL including plan documents.

The basic premise of the Standing Committee's arguments is that the preparation of pension plans constitutes the practice of law. In fact, as pointed out in Coopers & Lybrand's initial brief, pension planning is a business planning process which involves financial, actuarial, and other business and

administrative considerations. Pension planning and the preparation of related documents do have legal ramifications. However, the legal considerations are not predominant.[3] Thus, in many respects the designing, drafting and implementation of pension plans are essentially nonlegal activities and draw on a number of nonlegal skills. As a result, the plan document should be viewed as a business document, not solely as a legal document.

The training and expertise of an attorney is obviously different than that of a CPA, enrolled actuary or benefits consultant. Contrary to the Standing Committee's contentions, however, CPAs do much more than merely express professional opinions on financial statements. See, Response at p. 22. CPAs, enrolled actuaries and other nonlawyers who practice in the benefits consulting field are trained and expert in the nonlegal areas which dominate pension planning. As such, they are uniquely qualified to practice in the employee benefits area. Few attorneys, however, are qualified to make the financial, actuarial, business, human resource, employee/labor relations, economic and administrative determinations and analyses which nonlawyer benefits consultants specialize in and are essential to the successful establishment of a pension plan. Adoption of the proposed

---

3 Virtually every comercial activity has legal ramifications. Two examples are mergers and acquisitions and personal financial planning. This does not require, however, that the activity be classified as the practice of law and be orchestrated only by lawyers.

advisory opinion, which would prevent meaningful participation of qualified nonlawyers in pension design and implementation and limit the field to attorneys, will result in exactly what the Standing Committee purports to fear – limiting the employee benefits field to "persons with little or no training or education" in those areas crucial to successful pension planning. Response at p.22. It is, therefore, inappropriate to require attorneys to perform those analyses or supervise the professionals who make the analyses.

The interested parties do not suggest that 31 C.F.R. 510.2 (1989), which authorizes practice before the Service by certain classes of nonlawyers, or other applicable regulations permit any nonlawyer to engage in the general practice of tax law. The Treasury Regulations, however, do allow certain qualified nonlawyers to practice before the IRS with respect to federal tax issues which include plan design and implementation under ERISA. Further, the interested parties do not suggest that practice before the Service encompasses drafting of any document that has tax consequences such as petitions for dissolution of marriage or a corporate charter. Those documents are not governed by federal law nor are they in any way related to practice before a federal agency that permits representation by nonlawyers. The interested parties do not seek to represent persons in areas in which they have no expertise or which are clearly the exclusive domain of lawyers. The interested parties seek only to prevent an improper intrusion into their federally granted license to

practice in the tax and actuarial fields and represent persons before the IRS in connection with "laws or regulations administered by the Internal Revenue Service." 31 C.F.R. §10.2(a) (1989).

The proposed advisory opinion conflicts with and attempts to supersede ERISA and the Code in that the proposed advisory opinion denies CPAs, actuaries and other nonlawyers the right to engage in activities that are clearly authorized and related to activities permitted by the federal statutes and implementing regulations. As a result, under the holding in Sperry, the proposed advisory opinion is unconstitutional and should not be adopted.

POINT II

ADOPTION OF THE PROPOSED ADVISORY OPINION IS AGAINST THE PUBLIC INTEREST

The Standing Committee essentially argues that adoption of the proposed advisory opinion is in the public interest because, it "strike[s] a reasonable balance whereby qualified nonlawyers may participate in pension matters in their area of expertise while carefully restricting to licensed attorneys the duties of providing legal advice and services." Response at p. 6. In fact, the proposed advisory opinion fails to meet the Standing Committee's stated goals.

The proposed advisory opinion, without attempting to define legal issues or services in the context of the employee benefits field, arbitrarily designates every aspect of pension planning (except marketing the plan) as the practice of law and

requires that all facets of the pension planning process either be performed, directed or orchestrated by an attorney.

Successful pension planning requires knowledge and analysis of mainly nonlegal considerations such as human resource, tax, business, employee/labor relations, accounting, actuarial, economic and financial issues. Pension planning is a complex, multi-faceted process which involves a number of business decisions some of which have legal ramifications. The Standing Committee refuses to recognize that legal determinations or legal issues compose only one facet of the pension planning process and that, therefore, it is inappropriate to define the entire process as the practice of law. Instead of recognizing that the preparation of pension plan documents should be a team effort, with the client making the ultimate decisions, including which qualified professional should be the primary contractor, the Standing Committee attempts to place the lawyer in the driver's seat with the client or plan sponsor taking a back seat. It also effectively seeks to prevent qualified nonlawyer professionals from participating fully in plan design and implementation – a result which is detrimental to the public interest.

The proposed advisory opinion is vastly overreaching, ambiguous and unworkable. As a result, adoption of the proposed advisory opinion would be detrimental to the public interest in at least two important respects.

First the proposed advisory opinion would deprive plan sponsors of the ability to draw and rely on the expertise of

nonlawyer professionals in the pension planning field who are most qualified to provide advice regarding creation and implementation of a pension plan. It would not benefit the public to require attorneys, who are not trained in many of the areas which are involved in pension planning, to be solely responsible for making all the decisions involved in creating pension plans or supervising their creation and implementation.

Second, the proposed advisory opinion would be detrimental to the public interest to the extent that it would cause confusion and uncertainty among nonlawyers practicing in the employee benefits field with respect to the permissible scope of their activities,

Since the proposed advisory opinion improperly restricts nonlawyer involvement in pension planning and because the proposed advisory opinion is overreaching and unworkable, this Court should either decline to adopt the proposed advisory opinion as written or adopt an opinion which expressly allows CPA's, enrolled actuaries and other qualified nonlawyers to continue to engage in all aspects of pension planning for the reasons stated in Coopers & Lybrand's initial brief and in this reply.[4]

Alternatively, if this Court determines there is a need for further study and presentation of a new advisory

---

4 These reasons include, among other things, the education, training and expertise of CPAs' and enrolled actuaries as well as the high ethical and professional standards to which these nonlawyer professionals are held.

opinion, the interested parties suggest, as have several other parties in their initial briefs, that the Court appoint an ad hoc committee to fully study the issues raised therein and make recommendations to the Court. Appointment of an ad hoc committee would benefit and protect the public by assuring that a full objective investigation and analysis of all the facts and issues will have been conducted and that any advisory opinion ultimately adopted by this Court will not only adequately protect the public but also recognize the right of certain nonlawyer professionals such as CPAs and enrolled actuaries to engage in all aspects of pension planning pursuant to their federal authorization.[5]

A. Adoption of the proposed advisory opinion would be against the public interest since it would prevent nonlawyers from providing nonlegal advice in the design and implementation of a pension plan

The Standing Committee recognizes in its Response that there are a variety of financial, actuarial or business issues

---

5 The Standing Committee opposes the appointment of an ad hoc committee, arguing that they have adequately studied the issue and because a delay in resolving the issue "may prove to be very detrimental." Response at p. 42. There is no reason to believe that a delay will be detrimental. The IRS has issued what is in essence a two year extension of the date by which plan sponsors must file amendments to their existing plans in compliance with various new requirements for qualified plans. See Rev. Pro. 89-65, I.R.B. 1989-50 (December 11, 1989). In addition, the Record does not contain any evidence to support a finding of public harm particularly with respect to activities engaged in by CPA firms except for one alleged incident involving an unidentified "Big Eight" accounting firm. See, Transcript of the January 12, 1989 hearing at p. 83. One alleged isolated incident out of thousands of professional engagements surely does not support a finding of public harm.

involved in pension planning regarding which nonlawyers may advise clients. The Standing Committee, however, maintains the position that the lawyer must direct the entire process and that nonlawyers who participate, even as to "nonlegal" aspects, may do so only when the attorney requests their services. See, Response at p.32. The proposed advisory opinion in essence relegates financial, actuarial, tax, economic, administrative, employee/labor relations considerations to a secondary position in the pension planning process, This is inappropriate and inaccurate and ignores the complex financial and actuarial and other nonlegal considerations of ERISA. The Standing Committee argues that the lawyer must be placed in a supervisory capacity and that the preparation of a pension plan, including selection of options and drafting plan documents, may only be performed by lawyers because if it were not so the attorney would review the documents in a "cursory" manner which in essence would be allowing the nonlawyer to make all the "legal" decisions and perform the "legal" services. Response at p. 33.

Since design and implementation of pension plans involves primarily financial, actuarial, tax or other nonlegal considerations, qualified nonlawyers such as CPAs and enrolled actuaries should be permitted to prepare plan documents. Attorney review of plan documents after they have been prepared by a nonlawyer is or should be sufficient to protect whatever legal rights may be involved. The attorney has a professional and ethical obligation to make an adequate review of plan documents not only when the document was prepared at his

direction but when it was prepared at the client's direction as well. Thus, the possibility that an attorney will provide an inadequate or "cursory" review of plan documents is not a valid reason to proscribe nonlawyer drafting of plan documents.

A qualified nonlawyer should be permitted to prepare plan documents as long as the nonlawyer advises or "encourages the employer to consult with his own attorney with regard to adoption of any such [pension] plan." See Response at p.36 citing ABA Opinion at 14 (emphasis added), The fact that nonlawyers stamp draft documents "for review of counsel" does not indicate that the nonlawyer is practicing law or performing legal services. The purpose of stamping draft documents "for review of counsel" shows only that nonlawyers recognize that adoption of a pension plan, like many other business decisions, has legal ramifications which the client should discuss with a lawyer. The client should not be required, however, to hire counsel to design and implement a plan or to act as an intermediary between qualified nonlawyer professionals and the plan sponsor. Advising a client that there are legal ramifications to a business decision is no different from the situation where the attorney advises a client that there are financial or business implications to a legal issue or that a CPA should be consulted. This is not an admission on the part of the attorney that the decision is strictly a business or accounting decision that should only be handled by a nonlawyer. CPAs and actuaries are licensed professionals who operate under federal and state regulations and strict codes of

ethics that require them, among other things, to advise clients to consult a lawyer in appropriate situations or, when necessary, advise clients they are not qualified to assist them in a specific area. (See Initial Brief of Coopers & Lybrand at pp. 17-20 for a detailed discussion of the professional and ethical obligations imposed upon CPAs and enrolled actuaries by the individual states and their professions.)

The interested parties agree with the Standing Committee that "[i]n determining whether a particular act constitutes the practice of law, [the] primary goal is the protection of the public" and not the protection of the vested interests of a group of persons or professionals. See Response at p.40. In this case, the public will be harmed if qualified nonlawyers who are trained and expert in the employee benefits field are prevented from designing and implementing pension plans. This is particularly true where, as here, those qualified nonlawyer professionals are able, in many cases, to provide pension planning services that lawyers are unqualified or incapable of providing.

The interested parties do not suggest that nonlawyers should be permitted to design and implement pension plans merely "because they have been doing it for years." Response at p.41. Qualified nonlawyers such as CPAs or enrolled actuaries should be permitted to design and implement or establish pension plans because pension planning involves primarily nonlegal considerations or determinations, because federal law permits nonlawyers to engage in the design and

implementation of pension plans and, finally, because it is in the public interest to permit their continued involvement in every aspect of pension planning.

B. The proposed advisory opinion is overreaching and if adopted by this Court would result in uncertainty and confusion.

In its Response the Standing Committee states it is appropriate for nonlawyers to give nonlegal advice and further states that the proposed advisory opinion permits nonlawyer participation in the nonlegal aspects of pension planning provided it is under the supervision of a lawyer. The proposed advisory opinion states, however, that the rendering of advice as to every aspect of plan design, except marketing the plan, constitutes the practice of law. The proposed advisory opinion makes no distinction between nonlegal or legal advice.

The Standing Committee has made no effort to establish or demonstrate precisely, or even generally, how every aspect of plan design constitutes the practice of law or to separate the legal and nonlegal aspects of pension planning. As a result the proposed advisory opinion, which is meant to clarify The Florida Bar v. Turner, 355 So. 2d 766 (Fla. 1978), and provide lawyers and nonlawyers with guidance as to what constitutes the unlicensed practice of law in the pension planning area will, instead, create more confusion and uncertainty. The conflict between the Standing Committee's Response and the language of the proposed advisory opinion renders nonlawyer practitioners unable to determine when they

are preparing a "nonlegal" document as opposed to a "legal" document.

In addition, there are a number of inconsistencies between the language of proposed advisory opinion and the Standing Committee's interpretation of the proposed advisory opinion as articulated in its Response. Some of these inconsistencies are:

- The proposed advisory opinion permits nonlawyers to gather client information and explain alternatives generally. Proposed advisory opinion pp.10-12. In its Response, the Standing Committee interprets this to mean that nonlawyers are permitted to provide financial and business advice specifically applicable to the client's situation, Response at pp.31-32.

- The proposed advisory opinion does not recognize a nonlawyer's right to advise a client as to suitability of a plan from financial, actuarial, business, economic, administrative or employee/labor relations perspectives. It makes no distinction between legal or nonlegal suitability. The Response states that CPA's or other nonlawyers may advise as to the suitability of a plan from nonlegal perspectives. Response at p. 31.

- The proposed advisory opinion does not clearly state that various classes of nonlawyers may be involved in the qualification process. The Response clearly states that nonlawyers authorized to practice before the Service may be involved in the process. Response at p. 20.

- The proposed advisory opinion permits certain nonlawyers to draft annual returns or reports and tax returns required under ERISA. The Response states that nonlawyers may draft all nonlegal documents and may draft legal plan documents as long as the nonlawyer is working with an attorney who is supervising the process. In addition the Response would permit nonlawyers to review and presumably edit plan documents prepared by an attorney. Response at pp. 32-34.

- The proposed advisory opinion states that nonlawyers may not, under any circumstances, recommend adoption of a particular plan. The Response, however, states that nonlawyers may recommend particular plans from a financial or other "nonlegal" standpoint. Response at pp. 30-32.

- The proposed advisory opinion does not provide that nonlawyers may prepare plan documents for review of counsel. The Standing Committee states in its Response, however, that the services performed by Towers Perrin, including preparation of plan documents for review of counsel, are permissible under the proposed advisory opinion. Response p. 33, n. 9.

If certain types of activities by qualified nonlawyers are permissible any proposed advisory opinion adopted by this Court should clearly describe them to provide guidance to nonlawyer practitioners in the field. In this regard, for the reasons stated above and in the initial brief of Coopers & Lybrand, the interested parties' current policies and practices in the pension planning area, including drafting of plan documents for review of counsel, drafting of summary plan descriptions, and advising clients as to the suitability of a plan from nonlegal perspectives should be incorporated into the proposed advisory opinion thus providing a "safe harbor" for CPAs, enrolled actuaries and other qualified nonlawyers. Absent clear guidelines or an express exemption allowing CPAs, enrolled actuaries and other qualified nonlawyers to continue to engage in all aspects of pension planning, the proposed advisory opinion should not be adopted.

CONC USIO!

For the reasons stated above, and in the initial brief of Coopers & Lybrand, in which Arthur Andersen & Co., Peat Marwick Main & Co. and Price Waterhouse have joined, the proposed advisory opinion, as written, should not be adopted by this Court. If this Court should determine that the proposed advisory opinion should be adopted in some modified form, the opinion as modified should either reflect that the interested parties' current practices and policies are permissible or specifically exempt CPAs and enrolled actuaries from its application for the reasons stated in this reply and in Coopers & Lybrand's initial brief.

Alternatively, if this Court determines there is a need for further study and presentation of a new proposed advisory opinion, an ad hoc committee composed of representatives from the various professions involved and members of the public should be appointed to study the issues and formulate a new advisory opinion for consideration by this Court.

Respectfully submitted,

HUGHES HUBBARD & REED
Attorneys for Coopers & Lybrand
Arthur Andersen & Co., Peat Marwick
Main & Co. and Price Waterhouse
801 Brickell Avenue
Suite 1100
Miami, Florida 33131

By: Herschel E. Sparks, Jr.
Herschel E. Sparks, Jr.
Fla. Bar No. 0315461

By: Laura F. Patallo
Laura F. Pat-allo
Fla. Bar No. 603589

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January, 1990, a true and correct copy of the foregoing was mailed to:

Names, Address, Phone No.	Counsel for:
Lori S. Holcomb Mary Ellen Bateman Joseph R. Boyd The Florida Bar 650 Apalachee Parkway Tallahassee, Florida 32399-2300 904-561-5839	Standing Committee on Unlicensed Practice of Law
Robert F. Hudson, Jr. 701 Brickell Avenue Suite 1600 Miami, Florida 33131 305-789-8900	Tax Section of The Florida Bar
Leslie J. Barnett 100 Twiggs Street Tampa, Florida 33602-4312 813-223-5551	Tax Section of The Florida Bar
J. Robert McClure, Jr. Carlton, Fields, et al. 401 First Florida Bank Building Post Office Drawer 190 Tallahassee, Florida 32302 904-224-1585	Florida Association of Life Underwriters, National Association of Life Underwriters, Association of Advanced Life Underwriters
Stephen S. Cowen Steptoe & Johnson 1330 Connecticut Avenue, N.W. Washington, D.C. 20036 202-429-3000	Association of Private Pension & Welfare Plans, Inc.
Michael J. Dewberry Frank L. Jones Rogers, Towers, Bailey, Jones & Gay 1300 Gulf Life Drive Jacksonville, Florida 32207 904-398-3911	American Council of Life Insurance

Ira H. Lustagarten William T. Garcia Willkie Farr & Gallagher 1155-21st Street, N.W. Suite 600 Washington, D.C. 20036 202-328-8000	Towers, Perrin, Forster & Crosby, Inc.; American Institute of CPAs; Wyatt Co.; March & McLennan Cos., Inc.; Kwasha Lipton
J. Thomas Cardwell Virginia B. Townes Akerman, Senterfitt & Eidson Post Office Box 231 Orlando, Florida 32802 407-843-7860	Florida Bankers Association
Kenneth R. Hart Timothy B. Elliott Ausley, McMullen, et al. Post Office Box 391 Tallahassee, Florida 32302 904-224-9115	Florida Institute of CPAs
Chester J. Salkind 2029 K Street, N.W. Fourth Floor Washington, D.C. 20006 202-659-3260	American Society of Pension Actuaries
Sharon Lee Johnson 1570 Madruga Avenue Fourth Floor Coral Gables, Florida 33146 305-665-9927	Wolper Ross Ingham & Co.
James T. Comer, III Nan Underhill Post Office Box 21643 Tampa, Florida 33622-1643 813-289-1904	J.T. Comer & Associates, Inc.
Jose Kattan Bureau of Competition Washington, D.C. 20580 202-326-3134	Federal Trade Commission
Charles E. Ginsberg Post Office Box 926 Newburyport, Massachusetts 01950 508-465-5374	Alexander & Alexander Consulting Group, Inc.