IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR **RE: ADVISORY OPINION - NONLAWYER REPRESENTATION IN SECURITIES ARBITRATION**	**CASE NO. 89,140**

REPLY BRIEF OF INVESTMENT ARBITRATION CONSULTANTS, INC.

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1. Whether nonattorney companies or individuals who offer advice on securities related matters and represent the public before, during and/or after any NASD, NYSE, AMEX or other stock exchange arbitration proceedings for compensation are engaged in the unauthorized practice of law.

A. The representation of a party in securities arbitration proceedings is not the practice of law.

The answer brief of the Standing Committee on Unlicensed Practice of Law (hereinafter answer brief) asserts Investment Arbitration Consultants, Inc. (hereinafter IAC) reliance upon the case of ***Williamson v. John D. Quinn Construction Corp.***, *537* F.Supp. 613 (S.D.N.Y. 1982) is misplaced. While the exact same issue was not raised in ***Williamson*** as is raised the present case, the holding of *Williamson* is nevertheless important.

The court in *Williamson* refers to the **Committee** Report, Labor Arbitration and the Unauthorized Practice of Law, The Record of the Association of the **Bar of the** City of New York, Vol. 30, No. 5/6, May/June 1975 and its conclusion "that no support has to date been found in judicial decision, statute or ethical code for the proposition that representation of a party **in any kind** of arbitration amounts to the practice of law." (Emphasis added). The report then concluded "the Committee is of the opinion that representation of a party in an arbitration proceeding by **a** nonlawyer or a lawyer

from another jurisdiction is not the unauthorized practice of law." *Williumson,* at 616. (Emphasis added).

After citing the aforementioned language, the court in *Williamson* clearly adopts this language by noting no authority to the contrary has been cited to the court. *Id.*, at 616.

The answer brief next asserts IAC's reliance on Opinion 28 of the New Jersey Committee on the Unauthorized Practice of Law is misplaced. The answer brief then cites a portion of a footnote found in Opinion 28. (AB at 6). The portion of the footnote not cited in the answer brief is germane to the present case. The footnote goes on to state that "nonlawyers may provide ADR/CDR [alternative dispute resolution] services as long as they do not hold themselves out as lawyers and do not engage in any activities, such as the rendering of legal advice, that might constitute the unauthorized practice of law." Opinion 28 of the New Jersey Committee on the Unauthorized Practice of Law at pg.2, ftn. 1.

The answer brief next turns to a circuit court opinion from the State of Michigan in support of its argument. IAC submits that Prudential Securities, Inc. *v. McQuillan* should not be followed by this court in light of the *Williamson* case and the opinions of bar committees set forth in the initial brief of IAC.

The answer brief refers to the arguments set forth in the initial brief regarding

arbitrators not being required to be attorneys as a "red herring". On the contrary IAC submits this fact goes straight to the issue at hand. Even under the language of the proposed advisory opinion itself, what arbitrators do constitutes the practice of law. As noted in the SICA Report at page 521, arbitrators decide issues based on legal arguments such as statute of limitations, the admissibility of claimants' income tax returns, and issues of relevance or privilege. If the public is not harmed by nonlawyer arbitrators being allowed to make these type of "legal" decisions then it appears the public would also not be harmed by allowing nonlawyer representation in securities arbitration matters.

B. The Committee's conclusion nonlawyer representation in securities arbitration is not authorized is erroneous.

The answer brief asserts the lack of a specific rule permitting nonlawyer representation in securities arbitration matters supports a finding preemption has not taken place. IAC submits this is not necessarily so. The answer brief fails to address the fact that securities arbitration is a creature of federal law. The state of Florida is merely the geographical location of the arbitration hearing. As argued in the initial brief, the federal nature of securities arbitration supports a finding preemption does exist. (IB at pp. 11, 13).

The answer brief also discusses language in The Arbitrator's Manual which

permits a party to be represented by a person who is not an attorney, such as a business associate, friend, or relative. (AB at 17). The answer brief then goes on to cite language from the SICA Report which indicates it was not the intent of this language to allow nonlawyers to establish companies to represent individuals in securities arbitration.

It seems somewhat disingenuous to assert a nonlawyer business associate, friend, or relative may represent a party in securities arbitration, but a nonlawyer who does not fall within one of these categories is precluded. The business associate, friend, or relative may be completely ignorant of the securities industry. A nonlawyer who represents claimants for compensation, on the other hand, will be an individual who is very familiar with the inner workings of the securities industry.

In attempting to distinguish Opinion 28 of the New Jersey Committee on the Unauthorized Practice of Law, the answer brief first points out the proposed advisory opinion in this case does not deal with out-of-state attorneys. (AB at 19). IAC submits if anything is a "red herring" it is this argument.

The proposed advisory opinion from the outset takes the position that the issue of out-of-state lawyers representing the public in securities arbitration is not addressed in this opinion. Nevertheless, the opinion goes on to state that "[w]hile a lawyer admitted in another state is considered a nonlawyer in Florida, this opinion should not

be read to include lawyers admitted in other states coming in to Florida to represent a client in securities arbitration." Rule 10-2.1(b), R.Reg.Fla.Bar is then cited in the proposed advisory opinion.

Rule 10-2.1(b), R.Reg.Fla.Bar, clearly states that lawyers admitted in other jurisdictions are included within the definition of a nonlawyer or nonattorney.

By excluding out-of-state attorneys from the prohibition set forth in the proposed advisory opinion, the committee is clearly attempting to monopolize the securities arbitration field for attorneys. The record of the public hearing is clear that out-of-state attorneys come to Florida to represent the brokers. The committee may take the position these attorneys can seek to be admitted *pro hac* vice to appear in Florida to represent their clients. Yet, according to ***Williamson v. John D. Quinn Construction*** Cop., there is no provision for the admission pro ***hac vice*** of attorneys in an arbitration proceeding. In light of this fact, it seems clear securities arbitration is not the practice of law and nonlawyers should be authorized to represent parties in these proceedings.

Finally, the answer brief addresses the issue of protection of the public. There is no question there is a threat to the public whenever a person places their trust and reliance in the services of another. This is ***true*** whether one is hiring a plumber or an attorney. The question becomes what steps can be taken to protect the public and who is in the best position to take those steps.

IAC submits the proposed advisory opinion does not solve the problem of potential public harm. The opinion merely permits attorneys a monopoly in the field. As this Court well knows from the inordinate amount of time it spends on attorney discipline cases, the imposition of discipline only protects the public after the harm has already occurred.

As stated in the initial brief, this Court should leave this matter to those bodies (the SROs) which are best able to oversee regulation in the securities arbitration field.

D. CONCLUSION

For the reasons stated in the initial **brief of IAC** and **in this reply brief, the proposed** advisory **opinion** should **be rejected.**

Respectfully submitted,

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E. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished by hand delivery/U.S. Mail to Lori S. Holcomb, Assistant UPL Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; and John A Yanchunis, Chair, Standing Committee on Unlicensed Practice of Law, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 16th day of January, 1997,

RICHARD A. GREENBERG

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