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THE FLORIDA BAR
STANDING COMMITTEE ON
UNLICENSED PRACTICE OF LAW

FAO #87001, Request for Advisory Opinion, HRS Nonlawyer Counselor.
_____/

PROPOSED ADVISORY OPINION

This proposed advisory opinion is only an interpretation of the law and does not constitute final court action.

May 27, 1987

INTRODUCTION

This is a proposed Advisory Opinion issued pursuant to Chapter 10 of the Rules Regulating the Florida Bar. The Florida Department of Health and Rehabilitative Services ("HRS"), District Eleven, Dade County, Florida has requested a formal advisory opinion on the following issue:

> "Is the preparation of documents by lay counselors and the presentation of non-contested dependency court cases by lay counselors, including the filing of the documents, presentation of the case, request for relief and testimony of counselors the unlicensed practice of law?"

HRS uses the term "non-contested" to include all cases in which the parent or custodian has not denied the allegations of the petition, even if there are other disputes in the course of the proceedings. Consequently, the request seeks an opinion on whether HRS lay counselors may proceed without a lawyer in all dependency cases other than those in which a parent or custodian denies the allegations of the dependency petition and seeks a contested adjudication.

The Standing Committee on the Unlicensed Practice of Law (the "Committee") held a public hearing, pursuant to Rule 10-7 of the Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law on April 3, 1987, after giving the requisite public notice. After several hours of testimony, that

hearing was recessed and resumed on May 1, 1987. The Committee heard oral testimony from Betsy Webb, Program Supervisor with the Children, Youth and Families Program Office in Tallahassee of the Department of Health and Rehabilitative Services; Laurie Ramsay, an HRS contract attorney; the Honorable William E. Gladstone, Circuit Judge, Eleventh Judicial Circuit, and Associate Administrative Judge of that Circuit's Family and Juvenile Division; Daniel Dawson, Chairman of the Juvenile Rules Committee; and James Smart, Assistant State Attorney, Eleventh Judicial Circuit. The Committee also received copies of transcripts of hearings held in Judge Gladstone's court, written submissions by HRS, pleadings filed by HRS in various cases heard by Judge Gladstone, and letters from James Smart and Daniel Dawson. In accordance with Rule 10-7(g) of the Rules Regulating the Florida Bar, those materials and this Opinion are being filed with the clerk of the Florida Supreme Court.

SUMMARY OF HRS DEPENDENCY PROCEEDINGS

Sections 39.40-39.415, Florida Statutes, are the basic legislation giving rise to dependency cases in Florida. A child who is found to be dependent is, under § 39.01, Florida Statute, a minor who has been abandoned, abused, neglected, a runaway, a truant, or an ungovernable child. When HRS receives a report of abuse or neglect, a local intake officer of HRS conducts an

initial investigation, and may initiate a dependency proceeding in the circuit court. Fla. Stat. § 39.404. HRS may take the child involuntarily into custody if there are "reasonable grounds to believe that the child has been abandoned, abused or neglected, is suffering from illness or injury, or is in immediate danger from his surroundings and that his removal is necessary to protect the child." Fla. Stat. § 39.401(1)(b). Under those circumstances, a detention petition must be filed, the parents or custodian must be given notice and a detention hearing must be held within 48 hours to determine whether the child is to remain in a shelter. Fla. Stat. § 39.402(9)(a) and 10. At the detention hearing, the court is to determine whether continued shelter care is authorized for up to an additional 21 days prior to an adjudicatory hearing. Fla. Stat. § 39.402(10).

The statute requires HRS to file a dependency petition within 7 calendar days of the child's being taken into custody. Fla. Stat. §§ 39.402(10); 39.404(3). An arraignment hearing must be held no more than 14 calendar days after the child is taken into custody. Fla. Stat. §§ 39.402(10); 39.408(1)(a). At the arraignment hearing, the parent or custodian must either admit, deny or consent to findings of dependency alleged in the petition. Id. If an admission or consent is accepted by the court, the case is then set for a dispositional hearing, within 7 calendar days after arraignment but still within the 21 calendar days of the child's being taken into custody. Id. See Rule

8.730(b), Rules of Juvenile Procedure. If the parent does not admit to the petition, an adjudicatory hearing must be held within 7 calendar days of the arraignment hearing. Id. It is at the adjudicatory hearing that the State Attorney's Office must represent HRS in contested cases. Fla. Stat. § 39.404(4). HRS and the State Attorney's Office have taken the position that up to the time of this hearing, all of the foregoing actions may be taken by HRS lay counselors without an attorney.

Assuming the court finds dependency at the adjudicatory hearing or there has been a consent or admission accepted by the court, the next step in dependency proceedings is the disposition hearing. Fla. Stat. § 39.408(3). A pre-dispositional report is prepared by the HRS counselor and submitted to the Court. Id. In addition, written plans of proposed treatment, training or conduct may be submitted by any party. Rule 8.790(c), Florida Rules of Juvenile Procedure. See Fla. Stat. § 409.168. The disposition hearing must be held within 30 days of the adjudication. Fla. Stat. § 39.402(11). Once a dispositional order has been entered and a child has been committed to the custody of HRS or placed under the supervision of HRS, additional hearings may be held on issues such as the performance agreement or permanent placement plan, the six month judicial review, custody and the termination of supervision and/or jurisdiction. Fla. Stat. §§ 39.41; 409.168.

At each stage of the proceeding, the court must advise the parent or custodian of their right to have counsel present, and to have court-appointed counsel for insolvent persons. Rule 8.560(a)(1), Rules of Juvenile Procedure. In abuse and neglect cases, a guardian ad litem is mandatory for the child, and any party may request or the court may appoint a guardian ad litem to represent any child alleged to be dependent. Rule 8.590, Florida Rules of Juvenile Procedure.

FINDINGS OF FACT

A. Scope of the Dependency Problem

According to the evidence submitted, Florida has in excess of 2.5 million children under the age of 18. In the calendar year 1986, HRS received almost 50,000 reports of abuse, 77,000 reports of neglect, almost 18,000 reports of status offenders (runaways, truants, etc.), and almost 8,000 other dependency cases. This totals to in excess of 150,000 dependency cases referred to HRS. HRS has only 574 intake counselors for all abuse and neglect cases and 48 intake counselors for status offender cases. There are, in addition, 101 intake supervisors for abuse and neglect cases and 6 intake supervisors for status offender cases in the entire state of Florida. Almost 60% of all referrals result in credible evidence which would cause a reasonable person to believe a child was abused, neglected or

otherwise in need of dependency proceedings. In the past 10 years, the number of reports of children abused or neglected in Florida has increased by 168%, while the total child population of the State has increased by 12% during the same period of time.

In Dade and Monroe Counties (HRS District Eleven), there were almost 18,000 referrals of dependency cases in 1986. Historically, Dade and Monroe Counties have some of the lowest percentage of well-founded complaints of all the referrals received, averaging just over 45%. District Eleven has 74 dependency intake counselors and 12 dependency intake supervisors.

B. Training

The Committee heard extensive testimony that dependency cases are often delayed due to mistakes by HRS lay counselors. The mistakes and delays are due in large measure to the extraordinarily large case load HRS counselors must process, the lack of training afforded to HRS intake counselors on legal matters and the extremely high turnover rate among HRS counselors. Betsy Webb testified that the total formal training of intake counselors consists of 80 hours of pre-service classroom training, of which only 5 hours address the procedural aspects of presenting a case in court, and none of which provides any substantive legal training. The balance of the classroom training addresses the specifics of the investigation and counseling. Whatever training counselors receive on substantive legal matters relating to

dependency is on the job. Unfortunately, the turnover rate of intake counselors statewide is approximately 40% per year. Part of the reason for such a high turnover is the low pay scale for intake counselors, which begins at approximately $15,000 per year. Judge Gladstone described the overall problem as follows:

> "I think if you come to court you will see that there is pretty much another collapse in the system, that the dependency system is so woefully underfunded that the department really can't carry out its legislatively mandated functions . . ."

C. Public Harm[1/]

The Committee received extensive evidence reflecting harm which is inflicted on children who are involuntarily removed from the custody of their parent or custodian for excessive lengths of time, which results from delays in the disposition of dependency proceedings. While much of the evidence relates to cases which were heard by Judge Gladstone in Dade County, the Committee heard testimony of similar problems in other areas of the state.

The Committee reviewed a transcript of a hearing in a case, In the Interest of E.M., Case No. 87-15214FJ09 in which an HRS counselor mistakenly advised the court that HRS felt there was no

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1/ In The Florida Bar v. Moses, 380 So.2d 412, 417 (Fla. 1980) the Florida Supreme Court said:

> "The single most important concern in the court's defining and regulating the practice of law is the protection of the public from incompetent, unethical or irresponsible representation."

need to proceed with a dependency petition because the mother orally agreed to give custody of the child to her aunt. Judge Gladstone recognized that without a change in legal custody the mother could change her mind the next day and take the child back. HRS then advised the court that a petition would be filed.

In another transcript, in the case of In the Interest of C.E., Case No. 87-0015141FJ09, the court learned that after a month in which the child had been in Crisis Nursery, HRS had not yet attempted a diligent search and inquiry of the father, thereby requiring the matter to be reset and delayed. During the course of that hearing, the State Attorney observed that "there is a common sort of problem with our HRS counselors . . . ignoring the fathers in these particular cases . . . not giving them due regard quite often, because the fathers are inactive, although they are still parties."

Judge Gladstone also submitted several examples of "before and after" documents, which were inadequately prepared by HRS lay counselors and were redone with the assistance of HRS attorneys at Judge Gladstone's insistence. These included detention petitions, waiver and consent forms, permanent placement plans and performance agreements. Judge Gladstone also described an instance of an improperly filed motion to take a child into custody and several improperly prepared diligent search and inquiry affidavits. Finally, Judge Gladstone related a recent instance in his court where he appointed counsel for a parent, at

her request, and ten minutes later, before the parent had been able to consult with her counsel, an HRS counselor came back to his court with a signed waiver and consent from that parent.[2/]

These examples appear not to be isolated instances, but rather reflect a generalized lack of training and supervision of HRS counselors in the proper procedures and legal ramifications of their duties. Daniel Dawson described an example in Orlando in which an HRS counselor filed a Petition for Change in Placement, which placement was detrimental to the child, without the knowledge of HRS's lawyers, and another example where an HRS case worker, without the benefit of counsel, requested termination of jurisdiction with tragic consequence to the child. Mr. Smart and Mr. Dawson agreed with Judge Gladstone that the legal documents to be filed in court, (i.e., petitions, affidavits of diligent search and inquiry, performance agreements and case plans) should be reviewed by attorneys in every instance, and, as a result of Judge Gladstone's recent orders, that is the procedure now in effect in Dade County.

One type of harm which comes to children taken from their homes is that the strict time limits set by Chapter 39, Florida

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[2/] The Committee is particularly concerned with a document being used in Dade County, known as a "Waiver and Consent." In this document, prepared by HRS and signed by the parent or custodian and later submitted to the court, a parent or custodian waives the right to counsel, an adjudicatory hearing and the right to an appeal, and consents to the allegations in the dependency petition. HRS counselors should not be discussing this form with respondents in dependency cases.

Statutes, for disposition of dependency petitions is not met in many instances. Moreover, every delay in the process means that a child is removed from home longer than necessary. The overall concept of Chapter 39 is to reunite children with their parents as quickly as feasible or, if that is not feasible, place the children for adoption. The longer the dependency process takes, the longer it is before it is known whether the parents and HRS can agree on performance agreements or case plans which will establish the goals for the parents in order to cure the problems of abuse and neglect.

The Committee received the testimony of James Smart, an Assistant State Attorney, who observed that the dependency procedures in Florida have evolved over the past 20 years from a completely informal system in which there was no attorney involvement, into the current system which is becoming more formal, but is not as formal as delinquency cases. Mr. Smart testified that requiring constant involvement by lawyers representing the State or HRS would be counterproductive. It would increase delays because the system would become more adversarial. Moreover, Mr. Smart and HRS have expressed the fear that the cost of hiring additional lawyers would result in increased pressure on other areas of HRS budget, to the detriment of important social programs.

This problem is, however, not insurmountable. Mr. Smart observed that the way in which dependency cases are scheduled

could be adjusted to allow the lawyers who currently address dependency cases more effectively to review and supervise the activities of HRS counselors. Moreover, there may be ways of mobilizing the pro bono services of Florida lawyers to address the problem.

CONCLUSIONS OF LAW

In accordance with the Supreme Court's Opinion in The Florida Bar v. Moses, 380 So.2d 412 (Fla. 1980), this opinion will focus on the following questions: (1) whether the activities of HRS lay counselors constitute the practice of law; and (2) if so, whether they are authorized or unauthorized.

A. The Practice of Law

In The Florida Bar v. Brumbaugh, 355 So.2d 1186, 1191 (Fla. 1978), the Florida Supreme Court explained the nature of the practice of law:

> "If the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the person giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitutes the practice of law." (Quoting State ex rel The Florida Bar v. Sperry, 140 So.2d 587, 591 (Fla. 1962).)

The existing body of case law in Florida makes it clear that the drafting of pleadings and legally binding agreements, and representation of another in court are all the practice of law. The Florida Bar v. Mickens, _____ So.2d _____, 12 F.L.W. 141 (Fla. March 19, 1987); The Florida Bar v. Valdes, 464 So.2d 1183 (Fla. 1985); The Florida Bar v. McPhee, 195 So.2d 552, 554 (Fla. 1967). HRS argues, however, that it is appearing pro se, rather than "one for another", and that the HRS counselor does not perform services for another "person." The Committee rejects this argument.

HRS is established by statute, in part, to "prevent or remedy the neglect, abuse, or exploitation of children" and to "aid in the preservation, rehabilitation, and reuniting of families." Fla. Stat. § 20.19(1)(c) and (d). Moreover, § 39.001(2), Florida Statutes outlines, as among the purposes of Chapter 39:

> "To assure to all children brought to the attention of the courts . . . because of neglect or mistreatment by those responsible for their care, the care, guidance and control, preferably in each child's own home, which will best serve the moral, emotional, mental, and physical welfare of the child and the best interests of the state.
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> "To preserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only when his welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; and to assure, in all cases in which a child must be permanently removed from the custody of his parents, that the child be placed in an

approved family home and be made a member of the family by adoption."

These important public purposes are to be carried out by HRS in court proceedings. While it is true that the "child" is not the "client" of HRS, it is also true that "the preservation of the family unit" and "the best interests of the child" are, in effect, the public policies which serve as the client, just as, in criminal proceedings, the State Attorney represents the "people." The HRS lay counselors are not acting on their own behalf when they prepare and file detention petitions, dependency petitions, waiver and consent forms, diligent search and inquiry affidavits, and appear in court to pursue detention hearings, adjudicatory hearings and disposition hearings. They certainly are not pursuing these matters for their own private interests.

Since it is admitted by HRS that services they perform require them to "possess legal skills and a knowledge of the law greater than that possessed by the average citizen," it is apparent that at least some of the activities of HRS in the dependency area are the practice of law.

B. Authorized or Unauthorized

1. The Rule in Moses

The Florida Supreme Court licenses and authorizes the practice of law, pursuant to Article V, Section 15 of the Florida Constitution. The Court has done so in Rule 2.060, Rules of Judicial Administration. However, in The Florida Bar v. Moses, 380 So.2d 412 (Fla. 1980), the Florida Supreme Court ruled that

"the legislature has constitutional authority to oust the Court's responsibility to protect the public in administrative proceedings under Article V, Section 1 of the Florida Constitution, and when it does so any 'practice of law' conduct becomes, in effect, authorized representation." 380 So.2d at 417. The Committee has considered whether Chapter 39 constitutes a valid legislative enactment to oust the Supreme Court from jurisdiction over dependency cases. The Committee has concluded that it does not.

First, the Moses opinion was carefully limited to the question of whether the legislature could oust the Supreme Court from jurisdiction over the practice of law before state agencies. Article V, Section 1 of the Constitution specifically states that "commissions established by law, or administrative offices or bodies may be granted quasi-judicial power in matters connected with the functions of their office." That section therefore expressly carves out administrative agencies from the overall judicial power over the practice of law. Nothing in that section, however, suggests that the legislature could oust the Supreme Court from jurisdiction to determine who may practice law in the courts of this State.

In addition, the Florida Supreme Court has on several occasions distinguished between the power of the legislature to promulgate rules of procedure for administrative agencies, and the exclusive power of the Supreme Court to promulgate such rules

for the courts. Broward County v. Rosa, _____ So.2d _____, 12 F.L.W. 171, 172 (Fla. April 9, 1987) (Article V, Section 1 of the Constitution "recognizes the distinction between judicial and quasi-judicial power and authorizes administrative agencies such as the board to be empowered only with the latter. Indeed, to interpret this Constitutional provision otherwise would not only ignore its plain language, but it would also vest the legislative branch with the authority to create courts other than the four types that the Constitution authorizes"); Gator Freightways, Inc. v. Mayo, 328 So.2d 444, 446 (Fla. 1976) ("while procedure within administrative agencies is subject to statutory regulation, procedure in all Florida courts is governed by such rules of procedure as have been adopted by this Court"); Bluesten v. Florida Real Estate Commission, 125 So.2d 567, 568 (Fla. 1960) ("while the legislature may prescribe the method of conducting hearings and the procedure to be followed in the administrative agencies of this state, the sole power to prescribe rules for the practice and procedure in the courts is vested by the Constitution in this Court").

The Committee recognizes that there is a limit beyond which the courts may not direct the executive branch of government. Courts may not order HRS to provide specific prescribed treatment, Department of Health and Rehabilitative Services v. Owens, 305 So.2d 314 (Fla. 1st DCA 1974) nor may the courts direct HRS to place a juvenile in a particular place. In the

Interest of K.A.B., 483 So.2d 898 (Fla. 5th DCA 1986). However, the Florida Supreme Court's rule governing the practice of law, Rule 2.060, Rules of Judicial Administration, applies equally to HRS and to all other litigants. See, Magnolias Nursing and Convalescent Center v. Department of Health and Rehabilitative Services, 428 So.2d 256 (Fla. 1st DCA 1982) (HRS successfully moved to require a litigant to appear through an attorney). The Committee concludes that Chapter 39 of the Florida Statutes cannot oust the Florida Supreme Court from its jurisdiction to regulate the practice of law in the courts.

2. Special Statutory Proceedings

HRS argues that when the Florida Supreme Court promulgated Rule 1.010, Rules of Civil Procedure, it incorporated Chapter 39, Florida Statutes, the authority the legislature granted to lay counselors to practice law in dependency proceedings. That Rule states that

> "The form, content, procedure and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules specifically provide to the contrary."

In adopting the Rules of Civil Procedure, the Florida Supreme Court more generally stated

> "All rules and statutes in conflict with the foregoing rules are hereby superseded as of their effective date, and all statutes not superseded shall remain in effect as a rule promulgated by the Supreme Court." In Re Rules of Civil Procedure, 391 So.2d 165, 166 (Fla. 1980).

HRS argues that dependency cases are "special statutory proceedings." In support of its position, HRS refers to the decisions by which the replevin statute, Chapter 78, Florida Statutes, was held to be a special statutory proceeding. Gonzalez v. Badcock's Home Furnishings Center, 343 So.2d 7, 8 (Fla. 1977). Also see National Leasing Corp. v. Bombay Hotel, Inc., 159 So.2d 111, 112-13 (Fla. 3d DCA 1963) (same ruling under 1954 Rules of Civil Procedure). Likewise, two appellate courts in Florida have held that landlord/tenant eviction proceedings are "special statutory proceedings." Berry v. Clement, 346 So.2d 105, 106 (Fla. 2d DCA 1977); Lane v. Brith, 313 So.2d 91, 92 (Fla. 4th DCA 1975). HRS argues that the same rationale applies to dependency proceedings under Chapter 39, and relies on Fruh v. State Department of Health and Rehabilitative Services, 430 So.2d 581 (Fla. 5th DCA 1983) which held that where there are gaps in the Rules of Juvenile Procedure, the Rules of Civil Procedure are to be followed.

The Committee respectfully disagrees. Mr. Dawson testified that the 1984 revisions to the Rules of Juvenile Procedure were intended to be a comprehensive set of rules governing dependency cases, and that the Juvenile Rules Committee was aware of Fruh, but concluded that the legislature was incapable of promulgating procedural rules in Chapter 39. The Juvenile Rules Committee specifically wished to avoid, in the 1984 Rule changes, any need to refer to sources of procedural law

outside of the Rules of Juvenile Procedure. Accordingly, the contention by HRS that Chapter 39 is incorporated into the Rules of Juvenile Procedure is apparently incorrect.

Moreover, the UPL Committee has serious doubt that the Florida Supreme Court's adoption of the 1984 Revisions to the Rules of Juvenile Procedure intended to adopt the procedural portions of Chapter 39. When the Supreme Court adopted the 1984 Revisions, there was no Order similar to the one entered by the Court in 1980, that "all rules and statutes in conflict with the following rules are hereby superseded as of their effective date, and any statute not superseded shall remain in effect as a rule promulgated by the Supreme Court." 391 So.2d at 166. The Committee believes that on this record it is too speculative to say that procedural rules found in Chapter 39 became procedural rules of the Supreme Court through a process of double incorporation by reference.

3. Procedural or Substantive

The Committee concludes that to the extent Chapter 39 authorizes the practice of law by nonlawyer HRS counselors, the statute is an improper attempt to legislate procedure. The distinction between substance and procedure has been explained by Justice Atkins in In Re Florida Rules of Criminal Procedure, 272 So.2d 65, 66 (Fla. 1972) and repeated in Avila South Condominium Association, Inc. v. Kappa Corp., 347 So.2d 599, 608 (Fla. 1977):

> "Practice and procedure encompass the course, form, manner, means, methods, mode, order, process or steps by which a party enforces substantive rights or obtain redress for their invasion. 'Practice and procedure' may be described as the machinery of the judicial process as opposed to the product thereof.
>
> . . . [T]he terms 'rules of practice and procedure' includes all rules governing the parties, their counsel, and the court throughout the progress of the case from the time of its initiation until final judgment and its execution."

The Committee believes that under this definition, the regulation of the practice of law in dependency cases is without question a procedural matter, outside of the purview of the legislature. Therefore, the sole source of authority on which HRS counselors may rely to draft legal documents and appear in a representative capacity in court is the Rules of Juvenile Procedures.

4. Authorized and Unauthorized Conduct By HRS Counselors

Rule 8.710(a)(5), Rules of Juvenile Procedure, specifies that "authorized agents" of HRS shall sign detention petitions, and Rule 8.710(b) states that "authorized agents" of HRS "shall make a diligent effort to notify the parent or custodian of the child" of the detention hearing. If an "authorized agent" of HRS serves a pleading, he shall sign the certificate of service. Rule 8.630(b)(5). The Rules also seem to indicate that predisposition reports are prepared by HRS counselors, who submit them to the court. Rules 8.780(h); 8.790(a).

Other than these specific provisions, the Rules do not authorize nonlawyer agents of HRS to engage in the practice of law in dependency cases. The Rules do state that "any person" may file certain documents in court, e.g. Rules 8.510, 8.720(a)(1), 8.800(a), and that a "party" or "petitioner" shall have certain rights. E.g. Rule 8.630(a)(2). However, since HRS is an entity, these provisions do not authorize lay counselors to appear in a representative capacity for HRS. See, The Florida Bar v. Moses, 380 So.2d 412, 416 (Fla. 1980); Magnolias Nursing and Convalescent Center v. Department of Health and Rehabilitative Services, 428 So.2d 256 (Fla. 1st DCA 1982); Quinn v. Housing Authority of the City of Orlando, 385 So.2d 1167 (Fla. 5th DCA 1980).

HRS lay counselors often have expertise in dependency cases, and can be analogized to "legal assistants" or "paralegals," who may, under the direction of an attorney, prepare drafts of legal documents to be reviewed and signed by lawyers. Rule 4-5.3, Rules of Professional Conduct. Nothing in this opinion is to imply that HRS counselors may not act in this capacity so long as an HRS attorney or Assistant State Attorney carries out his responsibility to approve and take responsibility for the final product.

Moreover, nothing in this Opinion is intended to suggest that the investigative or counseling functions of HRS counselors constitute the practice of law, or that lawyers should be

substantively involved in discussions between HRS and the parent or guardian as to the goals and objectives to be agreed upon in a performance agreement or case plan. This Opinion deals only with proceedings in court and documents prepared and submitted to the court in dependency proceedings. Also, nothing in this Opinion should be read to suggest that HRS counselors should be inhibited from participating in judicial proceedings as witnesses to inform the court of the facts and their recommendations regarding the best interests of the family unit or the child. Rules 8.760(a)(2); 8.790(c)(1).

To summarize, HRS lay counselors are authorized to prepare, sign and file detention petitions, affidavits of diligent search and inquiry and predisposition reports. All other court documents (e.g. dependency petitions; permanent commitment petitions; waiver of counsel stipulations; motions; plans of proposed treatment, training or conduct; performance agreements; and petitions for permanent commitment) must be prepared by or under the supervision of a lawyer for HRS. HRS counselors must be represented by a lawyer in all court hearings in which issues are raised that affect legal rights of any party. HRS counselors may, of course, appear without a lawyer to testify, or to indicate to the court whether HRS recommends the acceptance of performance agreements or treatment plans.

5. Additional Considerations

The Committee was advised that the Juveniles Rules Committee is scheduled to meet on June 11, 1987 to consider possible amendments to the Rules of Juvenile Procedure which address the issues discussed in this Opinion. Should that Committee promptly propose rule changes to authorize greater participation by HRS counselors without legal representation, the UPL Committee requests that the Florida Supreme Court consider such proposed rule changes in conjunction with its consideration of this Opinion. The Committee believes that the important issues addressed in this Opinion are best considered in the context of the expertise of that Committee.

Respectfully submitted,

ROBERT M. SONDAK
Chairman, Standing Committee
on Unlicensed Practice of Law

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was forwarded to B. Elaine New, Esquire, Assistant General Counsel, State of Florida Department of Health and Rehabilitative

Services, 1317 Winewood Boulevard, Tallahassee, Florida 32301 by certified mail, this 27th day of May, 1987.

ROBERT M. SONDAK

RMS/187-0377