

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAR 31 1989

CLERK, SUPREME COURT

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Clerk

THE FLORIDA BAR

RE: ADVISORY OPINION

HRS NON-LAWYER COUNSELOR

_____/ CASE NO. 70,615

REPLY TO DEPARTMENT OF HRS BY EIGHT
MEMBERS OF SUPREME COURT COMMITTEE
ON HRS NON-LAWYER COUNSELORS

Honorable Carolyn K. Fulmer,
Circuit Judge
Robert M. Sondak
Christina A. Zawisza
Henry George "Skip" White
James G. Smart
F. Thomas Weber, M.D.
Stephen S. Zaricki
Jane H. Shaeffer

INTRODUCTION

This Reply is being filed by eight members of the Supreme Court Committee on HRS Non-Lawyer Counselors (a ninth member of the Committee, Daniel P. Dawson, is on vacation and could not be contacted) as a result of our receipt of the "Response of Department of HRS to Report and Recommendations of UPL Ad Hoc Committee." We respectfully request that this Reply be considered by this Court in conjunction with the HRS Response.

REPLY

On February 1, 1989, we submitted to this Court the Report of the Supreme Court Committee on HRS Non-Lawyer Counselors. That Report recommended to the Court a "minimum mandatory legal representation of HRS at every stage of dependency proceedings", specifically that "an attorney's supervision is required in the preparation of legal documents," and "an attorney's presence is required for all court proceedings." (Report at 3) The twelve member Committee included Samuel M. Streit, Assistant Secretary, HRS Children, Youth and Family Services, and Wayna Harris, Human Services Program Supervisor, HRS District Six, Children, Youth and Family Services. The Report was unanimous. As of February 1, 1989, the position of HRS was reflected in the Committee Report.

Inexplicably, on March 23, 1989, HRS filed a "Response" to the Committee Report, repudiating the unanimous recommendations of the Committee. Now, HRS argues to this Court that the Committee recommendations are too expensive, and that HRS can save money by having social workers practice law in dependency cases.^{1/}

^{1/} This was an assertion first made by HRS in April, 1987, in the proceedings before the Standing Committee on Unlicensed Practice of Law, and repeated to this Court later in 1987, in the briefs filed by HRS. The Committee, of course, focused substantial time and effort on this issue, as well as all other issues which this Court asked it to address.

We submit that the Committee Report correctly resolved the issues raised by this Court's Opinion, and respectfully request that this Court implement the recommendations of the Report. We are astonished that HRS has gone back on its word first given in November, 1988, during the Committee deliberations, and publicly reiterated as recently as early March, 1989. Attached hereto are copies of the minutes of the Committee Meetings of November 18, 1988, and January 20, 1989. Those minutes reflect the agreement by the HRS representatives to all of the recommendations of the Committee to this Court as to required legal representation of HRS in dependency proceedings. Also attached is Samuel Streit's February 21, 1989 letter to a member of the Committee, Robert M. Sondak, in which Mr. Streit states:

"Please be assured that the Department is not receding from its position that there be legal representation for the department in dependency cases. We continue fully to endorse the recommendations submitted by the Committee ..."

Further, attached are a copy of an article from the March 5, 1989 *Miami Herald* in which Mr. Streit again reiterated HRS' support for the Committee's recommendations and an editorial in the March 9, 1989 *Miami Herald*.

It is particularly ironic that HRS now seeks to separate out other recommendations of the Committee from the main thrust of the Committee's Report -- that HRS must have lawyers representing it in all phases of dependency cases. During the Committee's

deliberations, it was HRS which insisted that the Report state: "the dependency process will not be materially changed unless each of the symptoms of the problem covered in this Report is remedied."^{2/} (Report at 3) We simply cannot understand how HRS can, two months later, take such a dramatically different view of this same subject matter. The HRS "Response" contains no new facts or argument not previously addressed in these proceedings. On the merits, we perceive no validity to the change in the HRS position expressed in the Response.

The primary thrust of the HRS response is to present a cost estimate of \$4 million to handle "uncontested" cases and another \$7 million to handle "contested" cases. These numbers are thoroughly misleading. The HRS Report admits that the \$7 million estimate is irrelevant (HRS Response at 6) -- under current law the State Attorneys Office is obligated to represent HRS in "contested" dependency cases. Because HRS insisted to the Committee that HRS wanted to undertake responsibility for the legal representation of its counselors in contested cases, the Committee recommended that HRS undertake that responsibility. If HRS is now saying that it cannot afford that representation, HRS

^{2/} As the January 20, 1989 Committee minutes reflect, HRS advocated that the Report go further to state that "none of the issues discussed were severable from the other two, and that absent an acknowledgment of the collective and mutually inclusive nature of these three subject areas, there would be no tangible improvement in Florida's juvenile dependency system." (1/29/89 Minutes at 8).

should never have asked the Committee to seek a change in current law. The State Attorneys Office can continue to assume that burden. Who furnishes the lawyers to represent HRS counselors in court is not the primary issue before this Court. This Court need only decide whether a lawyer must represent HRS counselors in these matters.

Before this Court is a legal issue, not one of who best can devine the future actions of the legislature. In any event, any cost estimates are speculative, and the HRS cost estimates are incomplete.^{3/} Implementation of the Committee Report could save HRS money, not cost it any additional funds. The average time abused and neglected children now spend in foster care is in excess of 30 months. HRS spends approximately \$300.00 per month, per child for foster care. The Committee Report states that lack of legal representation of HRS in dependency cases heavily contributes to delays in the process. If furnishing legal representation for HRS brings down the average foster care stay for the roughly 8,000 children in foster care by only two months, the savings to HRS will pay the entire cost of furnishing counsel. If the average is brought down to the statutory maximum

^{3/} The HRS Response fails to mention available sources of funding for this legal representation. For instance, the Committee Report referred to a Federal Statute, the Children's Justice and Assistance Act, PL 99-401, which makes funds available to states to improve programs including resources for legal staff. (Report at Appendix III - 2) To our knowledge, Florida hs not yet applied for any such funds.

of 18 months, HRS will save tens of millions of dollars on foster care expenses. Moreover, there is an incalculable human cost to the current system.

"greater investment of time by lawyers in the system is necessary, if we are to protect that important rights of children and families whose lives come under the control of the system." (Report at 37)

CONCLUSION

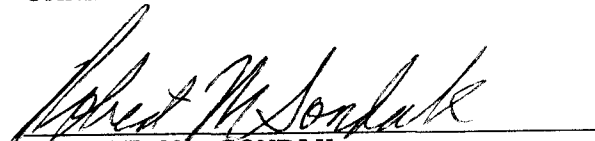
The Committee correctly concluded that lack of legal representation of HRS causes harm to abused and neglected children in HRS' custody. Adoption of the Committee recommendations will improve the dependency system. This issue is to be decided first by this Court and then implemented:

"The Committee believes that the promulgation of an opinion by the Supreme Court will lead to the legislative changes and funding increases that would make a new uniform statewide system of representation for HRS an effective tool in the State's effort to protect the children of Florida from further harm." (Report at 25)

For all of the foregoing reasons, we respectfully request that this Court implement the recommendations of the Committee Report.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was furnished to all addressees on the attached Service List by mail this 31st day of March, 1989.


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