IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Re: ADVISORY OPINION

HRS NONLAWYER COUNSELOR

CASE NO. 70,615

REPLY BRIEF OF THE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

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SUMMARY OF ARGUMENT

The dependency process is a unique process designed to protect the welfare of the child and the best interest of the state. The dependency process is unlike the delinquency system. Delinquency cases adjudicate the guilt of a child for a delinquent act. Dependency cases determine whether a parent has abused or neglected their child and the needs of the child. The rationale used to make the delinquency system adversarial simply does not apply to dependency cases. The goals of the dependency system are best meet through a nonadversarial system with HRS counselors handling uncontested cases.

HRS counselors are not engaged in the practice of law. HRS is not harmed by dependency counselors performing their historical role in uncontested cases. The traditional test to determine whether an activity constitutes the practice of law is not met since the counselors do not perform services "by one for another."

The functions of HRS counselors are authorized by the Rules of Juvenile Procedure and by Chapter 39. The Rules of Juvenile Procedure allow HRS to perform specific functions without an attorney. They also allow any "person" or "party" to act without counsel. HRS contends it is a party and as a party is not required under the Rules to be represented by counsel.

Chapter 39 is a special statutory proceeding which has been adopted by the Rules of Civil Procedure as a court rule. Special statutory proceedings include the procedure to be

followed and the issue of who may appear in the proceeding. The fact that dependency proceedings have evolved from chancery courts does not prevent this Court form finding that Chapter 39 is a special statutory proceeding.

If this Court finds that HRS dependency counselors are currently engaged in the unauthorized practice of law it should adopt a rule to authorize current practice. The Court should determine the best practice to follow in dependency cases. The cost to have attorneys perform all the functions required under the proposed advisory opinion will be high and the benefits doubtful. These monies can better be spent on social services, not attorneys. If the state is required to use attorneys, the dependency system will be drastically affected. Such a significant change from current practice requires a full consideration of all the issues by this Court.

ARGUMENT

I. Dependency Proceedings Differ From Delinquency Cases.

HRS in its initial brief discussed at length the historical role of the dependency process. HRS believes this background is important for this Court. It should help the Court put the long standing practice of HRS social workers presenting uncontested dependency cases into perspective.

The brief of the interested party the Juvenile Rules Committee (JRC) recognizes the historical role of HRS counselors. JRC brief at 2.

The brief of the Unlicensed Practice of Law Committee does not dispute this historical nature of dependency cases.

On the other hand the interested party, Florida Legal Services (FLS) disputes the informal nature of dependency proceedings. FLS brief at 6. They argue that dependency proceedings are not informal and should not be informal. Florida Legal Services urged this Court to rely upon Kent v. U.S., 383 U.S. 541 (1966) and In re Gault, 387 U.S. 1 (1967) and to change the historical role of the dependency process.

This argument, it is conceded by Florida Legal Services, goes beyond the scope of whether HRS dependency counselors are engaged in the unauthorized practice of law. Nevertheless, the basic argument raised by Florida Legal Services will be briefly addressed. They suggest that these U.S. Supreme Court decisions (Kent and Gault) provide the rationale for this Court extending the protections afforded a child in delinquency to the need for counsel for the state in dependency. Several problems are apparent with this approach.

Kent and Gault apply to delinquency. In Kent v. U.S., 383 U.S. 541 (1966) the U.S. Supreme Court was faced with interpreting the Juvenile Court Act of the District of Columbia. That Act required a "full investigation" before a juvenile could be waived from the Juvenile Court to the District Court for prosecution. The Supreme Court's interpretation of the Juvenile Act required that the waiver order itself include a statement of the reasons for waiver, including sufficient information to show a "full investigation."

In Gault, 387 U.S. 1 (1967), the Supreme Court addressed the procedural due process rights which must be afforded a juvenile who is accused of a delinquent act. The Court concluded that the juvenile is entitled to, among other things, appointed counsel if he is indigent.

The Supreme Court recognized that the parens patriae approach to juveniles comes from chancery where the state acted in loco parentis for the purpose of protecting the property interests and the person of the child. Gault, 387 U.S. at 16. It found that rationale inapplicable to delinquency proceedings, but implied it was appropriate for proceedings designed to protect the child, such as dependency.

Both Gault and Kent addressed the process due a juvenile in a delinquency proceeding.

This Court has previously recognized the distinction between delinquency and dependency proceedings. In In the Interest of D.B., 385 So.2d 83 (Fla. 1980), this Court was faced with the question of whether parents were entitled to counsel in

dependency proceedings. The Court rejected the contention that Gault required appointment of counsel in dependency proceedings. This Court noted:

> [I]t should be recognized that juvenile dependency proceedings and juvenile delinquency proceedings have distinct and separate purposes. Dependency proceedings exist to protect and care for the child that has been neglected, abused or abandoned. Delinquency proceedings on the other hand, exist to remove children from the adult criminal justice system and punish them in a manner more suitable and appropriate for children. . . . .[J]uvenile dependency proceedings,. . all concern the care, not the punishment of the child.

385 So.2d at 90. (Emphasis added)

This Court has recognized the distinction between dependency and delinquency proceedings. Yet Florida Legal Services urges this Court to rely upon delinquency cases to change the historical role of the dependency process.

Florida Legal Services urges this Court to go into uncharted territory and have dependency proceedings become adversarial in the same manner as delinquency cases. As part of the new adversarial dependency process it is urged the state should be required to be represented by counsel. This suggestion would drastically change the current dependency system and will have other ramifications. If HRS appears in dependency cases only through counsel, an imbalance in the system would be created. Parents are entitled to counsel only in termination of parental right cases and do not have a constitutional right to appointed counsel in dependency cases. See In the Interest of D.B., 385 So. 2d at 91. The Supreme Court has noted that if the

state is represented by counsel but the parents are not, "the contest of interests may become unwholesomely unequal". Lassiter v. Department of Social Services, 452 U.S. 18, 28 (1981), (parents are not always entitled to counsel in cases involving permanent termination of parental rights). If the parents are not entitled to counsel in dependency cases, and the state is required to appear by counsel, the contest will become unequal.

Dependency proceedings have historically had different goals and different processes to achieve those goals than delinquency cases. The rationale for an adversarial delinquency system simply does not apply to dependency proceedings.

II. HRS Counselors Are Not Practicing Law.

The Unlicensed Practice of Law Committee's function is to determine whether a function is the practice of law and whether it is an unauthorized practice of law. The Committee should not concern itself with whether a function might be better performed by lawyers or whether third parties would be better off if lawyers were performing a function. That is not the Unlicensed Practice of Law Committee's role or the initial role of this Court.

The first step is to determine whether these functions constitute the practice of law. All parties including HRS have placed great emphasis upon the phrase from The Florida Bar v. Brumbaugh, 355 So.2d 1186, 1192 (Fla. 1978), which states that in determining whether an activity constitutes the practice of law, the primary goal should be protection of the public. See also, The Florida Bar v. Moses, 380 So.2d 412, 417 (Fla. 1980). This phrase needs to be reexamined.

In Brumbaugh the issue was whether Ms. Brumbaugh's secretarial service which assisted persons with uncontested divorces was engaged in the unauthorized practice of law. Brumbaugh held herself out to the public as competent to perform these services. This Court's concern was harm to the public who received her services, not harm to other persons who were not recipients of her advice. Here the focus should be whether HRS is harmed by the functions performed by dependency counselors. Counselors do not hold themselves out to the public as capable of performing legal services for the public. They work for HRS to

accomplish the agency's goals. HRS does not suffer harm as a result of the functions performed by its dependency counselors.

The traditional test for practicing law includes the requirement that services be rendered "by one for another." State ex rel. The Florida Bar v. Sperry, 140 So.2d 587, 591 (Fla. 1962). HRS has argued that the HRS counselor appears pro se. The Unlicensed Practice of Law Committee brief suggests that if workers appear pro se they would be representing their individual interests. UPL brief at 10. "Pro se" means for himself. Black's Law Dictionary 1364 (4th ed. 1968). The worker is appearing for himself as an HRS dependency worker. Of course, the worker is not representing his individual personal interest. The worker is part of HRS and as part of HRS is representing its interests.

The Unlicensed Practice of Law Committee also suggested that the pro se argument is inconsistent within this Court's opinion in, In the Interest of D.B, 385 So.2d 83, 93 (Fla. 1980). UPL brief at 11. The Court correctly noted, in D.B., that dependency proceedings are instituted to protect the child. The state as parens patriae is seeking to protect the child who is unable to protect his own interests. It is clear from Section 39.001(2)b, Florida Statutes (1985) that the purpose of dependency is to protect the welfare of the child and the best interest of the state. This does not mean, however, that HRS represents the child. HRS counselors proceed on behalf of HRS which is carrying out the state sovereign's role as parens patriae.

Florida Legal Services suggests that the facts in The Florida Bar v. Moses 380 So. 2d 412 (Fla. 1980), are similar to the situation here. FLS brief at 19. In Moses a labor relations specialist represented the Escambia County School Board's interest in administrative hearings. The specialist presented contested cases before an administrative hearing officer. He was not a member of that Board or its employee. This case is distinguished from Moses because here, dependency employees, a part of HRS, are presenting uncontested cases before the court, and are authorized under Chapter 39 to do so.

This Court has not directly held that corporations must appear through counsel. Florida Legal Services relies upon Professional Ethics of The Florida Bar Opinion 87-2 for the proposition that HRS should be treated like a corporation and required to appear through counsel. FLS brief at 19. The concern addressed in that opinion was preventing opposing counsel from having an unfair advantage when litigating against a government agency. In this Unauthorized Practice of Law case, it is in the government agency's interest to allow its authorized agents to represent it in uncontested juvenile dependency proceedings.

This Court has not said that state agencies can only appear by counsel. The state as sovereign should be allowed to enter its courts through whatever representative it deems appropriate without it being found to be the practice of law, especially when the proceeding is informal in nature as dependency proceedings traditionally have been. In State v.

Johnson, 345 So.2d 1069 (Fla. 1977), this Court considered whether it was proper for a law enforcement officer to appear and testify in noncriminal traffic infractions cases without the presence of an attorney prosecutor. In noncriminal traffic infraction cases the Court noted the judge is required to explain the purpose and procedure of the hearing and the rights of the offender. The offender or his counsel can ask questions of the officer and offer additional testimony and closing argument. This Court upheld that practice. The Court noted:

> The hearing is conducted in an informal manner by a judge without a jury. This is similar to the procedure in juvenile court. . . .

345 So.2d at 1071 (Emphasis added).

Apparently the petitioners in Johnson raised other questions about the practice of law. But this Court found:

> The other objections to the statutes relating to an alleged conflict with the Intergration Rule of The Florida Bar and the Code of Judicial Conduct are without merit and do not warrant discussion.

345 So.2d at 1072.

The situation in traffic court is, as this Court has previously found, similar to the process in juvenile court. The functions of HRS dependency counselor in an uncontested dependency case are similar to those performed by a law enforcement officer in a noncriminal traffic infraction case. This Court allowed prosecution of a noncriminal traffic infraction without an attorney; it should also allow uncontested dependency cases to proceed without an attorney.

III. HRS Counselors Are Not Engaged In The Unauthorized Practice of Law.

If the functions of HRS dependency counselors constitute the practice of law, the next step is to determine whether these functions are authorized. HRS contends that The Rules of Juvenile Procedure authorize lay counselors to handle uncontested cases and that Chapter 39 is a special statutory proceeding which authorizes lay counselors to perform these functions.

A. Rules of Juvenile Procedure

The Unlicensed Practice of Law Committee disputes HRS' interpretation of the term "party" and "person" as it is used in the Rules of Juvenile Procedures and the references to the Department of Health and Rehabilitative Services. The Juvenile Rules Committee and the interested party, Florida Legal Services agreed with the UPL committee. HRS believes that as the petitioner, it is a party in dependency proceedings. Rule 8.540, Fla. R. Juv. P. As a party, HRS may choose to appear without counsel. Rule 8.640 (b), Fla. R. Juv. P.

Under Rule 8.800, Florida Rules of Juvenile Procedure, the Department is to submit a performance agreement to the court. The Unlicensed Practice of Law committee found that the performance agreement had to be prepared or reviewed by an attorney and submitted to the court by an attorney. The performance agreement under Section 409.168, Florida Statutes (1985) is a contract. It is signed by the parents, the guardian ad litem, the Department and the child if appropriate. Section 409.168(2)g, Florida Statutes (1985). It is true that a guardian

ad litem is prohibited from practicing law. It is also true that a guardian ad litem is a party to and signs the performance agreement. This rule should be read to authorize HRS workers to prepare and file for the department, a performance agreement. A liberal interpretation of this rule would be consistent with the approach taken by this Court in The Florida Bar re: Amendment to Rules Regulating The Florida Bar, 12 F.L.W. 366 (July 6, 1987).

The signing of a performance agreement by these parties is similar to an installment sales contract entered into by a purchaser of a new car. The salesman for the new car dealer offers the contract, the parties negotiate the terms, and each side executes the contract. The fact that the car dealership is a corporation does not require the dealership to have an attorney in these negotiations. Neither should HRS be required to have an attorney for a performance agreement.

B. Chapter 39 is a Special Statutory Proceeding

Chapter 39 should be considered a special statutory proceeding. The Unlicensed Practice of Law Committee suggested that since dependency proceedings have evolved from courts of equity that they cannot be considered special statutory proceedings. UPL brief at 16. In Gonzalez v. Badcock's Home Furnishing Center, 343 So.2d 7 (Fla. 1977), the replevin statute was found to be a special statutory proceeding. Replevin is one of the most ancient and well-defined writs known to the common law (See 12 Fla. Jur. 2d Conversion & Replevin s. 30), but that did not stop this Court from finding it to be a special statutory proceeding. Similarly even though dependency proceedings have

evolved through equity, that fact does not prevent this Court from finding Chapter 39 is a special statutory proceeding.

The Unlicensed Practice of Law Committee also suggested that the Rules of Juvenile Procedure should stand alone and not be supplement by the Rules of Civil Procedure. App. A at 16-18. Yet they suggest that these same rules should be supplemented by the Rules of Judicial Administration since the Rules of Judicial Administration apply in "all courts to which the rules are applicable by their terms". Fla. R. Jud. Admin. 2.010. The Rules of Civil Procedure, however, contain similar language. Rule 1.010, Florida Rules of Civil Procedure provides that "these rules apply to all actions of a civil nature. . .".

Florida Legal Services suggests that even if Chapter 39 is a special statutory proceeding, the issue of who may practice in those proceedings is not addressed in special statutory proceedings. Rule 1.010, Florida Rules of Civil Procedure addresses "the form, content, procedure and time" in special statutory proceedings. It does not specifically address who may practice in the special statutory proceeding; however, the term "procedure" should be read to include who may practice in the proceeding. "Procedure" is defined as:

> The mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which, by means of the proceeding, the court is to administer; the machinery as distinguished from its product.

Blacks Law Dictionary 1367 (4th ed. 1968).

The term "procedure" should include who may practice in special statutory proceedings. The "machinery" is the lay counselor who processes the uncontested case.

Florida Legal Services also suggests that even if Chapter 39 is found to be a special statutory proceeding, nothing in Chapter 39 explicitly allows counselors to proceed in uncontested cases. FLS brief at 24. Chapter 39 is clear. Section 39.01(5), Florida Statutes (Supp. 1986) provides that an "authorized agent of the department means a person assigned or designated by the department to perform duties or exercise powers pursuant to this chapter". An authorized agent can perform any function for the department which the department is required to do. This section does not require an "authorized agent of the department" to be an attorney. Additionally, Section 39.404(5), Florida Statutes (1985), specifically provides that "the intake officer may set the case before the court for an adjudicatory hearing" if it is uncontested.

Florida Legal Services argues that reading Chapter 39 to authorize lay dependency counselors to proceed for HRS in uncontested cases violates the rules of statutory construction. They argue that the legislature did not intend to repeal Sections 454.021(2) and Section 16.015, Florida Statutes when it adopted Chapter 39. [1]

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[1] The Florida Legal Services brief suggests that "there is agreement that the Legislature can regulate which lawyers may appear on behalf of the state and, unless it specifically states otherwise, it has chosen the Department of Legal Affairs to represent all executive departments in the state and Federal Courts". FLS brief at 25. HRS does not agree with this conclusion. It is a mischaracterization of its initial brief. The Department of Legal Affairs is only authorized to represent the State.

Florida Legal Services ignores several other rules of statutory construction. Where there is any doubt as to the meaning of a statute, the purpose for which it was enacted is of primary importance. Tampa-Hillsborough County v. K.E. Morris Alignment Service, 444 So. 2d 926 (Fla. 1983) (statutes should be construed in light of the manifest purpose to be achieved by the legislation). Chapter 454 and Section 16.01(5) should be read in conjunction with Chapter 39. They should be read together with reference to the purpose designed to be accomplished. Chapter 39 is to accomplish the purpose of protection of dependent children. Chapter 454 is to prevent persons from holding themselves out to the public as competent to practice law. The purposes of Chapter 39 can be accomplished without infringing upon the purposes of Chapter 454 or Section 16.01(5). The highly specific Chapter 39 authorizes HRS agents to proceed on behalf of HRS in dependency proceedings. This chapter takes precedence over the general enactment of Chapter 454 which speaks to the public at large and over Section 16.01(5) which addresses the state at large.

The doctrine of contemporaneous construction is also relevant. That doctrine provides that a construction placed on a statute by a body charged with its enforcement is persuasive. Dept. of Environmental Regulation v. Goldring, 477 So. 2d 532 (Fla. 1985). Here HRS is charged with carrying out the provisions in Chapter 39. When that statute was passed, HRS interpreted it to allow lay counselors to handle uncontested dependency cases. Then juvenile courts did not questions that construction. Since Chapter 39 has been interpreted this way for

14 years, that interpretation should be persuasive as to whether Chapter 39 authorizes lay dependency counselors in uncontested cases.

IV. If HRS Counselors Are Engaged in the Unauthorized Practice of Law, Rules Should Be Adopted To Authorize Current Practice.

A. This Court Should Adopt Rules

If this Court applies the facts here to the law on unauthorized practice and determine that HRS counselors are engaged in the unauthorized practice of law, it is then faced with an important public policy decision, that is, should the Court authorize these functions by rule.

The Unlicensed Practice of Law Committee agrees that HRS should be given time to implement this opinion but does not agree that rules should be adopted to authorize current practice.

The Juvenile Rules Committee notes that it is considering other proposed rule changes.

Florida Legal Services opposes rules which would authorize the current practice. Florida Legal Services suggests that nonlawyers are acceptable in any other forum but not to represent HRS in dependency cases. FLS brief at 11.

A number of policy reasons must be considered by this Court in deciding whether to adopt a rule.

Attorneys will not improve practice in juvenile court dependency hearings. Judge Gladstone has suggested that the only thing lawyers would do would be to ensure an orderly process in the courtroom. See App. C at 94. In the example in Appendix F-2 the attorney could not have performed the search for the parent and could not guarantee it would be done in a timely manner. In that case, the attorney knew before the hearing that the affidavit had not been done. He knew this two weeks before the

hearing. His knowledge of the need for the affidavit does not guarantee that it will be prepared in a timely manner.

Florida Legal Services suggests that one problem with authorizing lay workers to perform their function in dependency is that the Court lacks the mechanism to hold workers to the same high standards of conduct required by attorneys. The Court always has its contempt powers if workers are acting in an unethical manner. The worker can be considered an officer of the court in the same way that a guardian under Chapter 744 is an officer of the court. See In re Guardianship of Krecl, 55 So. 2d 727, 730 (Fla. 1956).[2]

It is appropriate to consider potential harm to the public in determining whether a rule should be adopted. However, the public will be protected and the goals of the dependency process furthered through the use of well trained counselors in uncontested dependency cases.

One factor cited by the Unlicensed Practice of Law Committee is delay in the system. HRS suggests that if it has attorneys handling its dependency cases, the cases will become contested, and the process will be slowed down rather than

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[2]Florida Legal Services suggests that it is unethical for HRS workers to offer the waiver and consent form to unrepresented parents. The simple offering of the form as opposed to explaining the legal consequences of the parents signing the form is not practicing law and is not unethical. This "problem" is no worse than that of the nonlawyer police officer giving an arrestee his Miranda rights and seeking a knowing and intelligent waiver of those rights.

expedited. The U.S. Supreme Court implied that attorneys for the parents would lengthen the proceedings and the cost involved. See Lassiter v. Department of Social Services, 452 U.S. at 28.

Florida Legal Services argues that to protect the due process rights of parents and children that HRS must be represented by counsel. This argument is backwards. The process due the parents and child will not be affected by whether the opposing party, i.e. HRS, is represented by counsel. A party's due process is not affected by the presence of counsel on the opposing side.

The Court should also consider the long-standing practice of HRS dependency counselors presenting uncontested cases to the court. This practice has been in effect since 1973 and prior to that these functions were performed by court employees. Mandating that HRS use lawyers will be a drastic change from this long-standing practice. Such a change might also affect the state's right to appear in other situations such as noncriminal traffic infraction cases.

If this Court requires attorneys to appear in the presentation of uncontested dependency cases, it should also consider the impact to others besides HRS. Licensed child placing agencies, such as the Children's Home Society, also presently proceed in uncontested dependency proceedings through lay counselors. If these agencies must comply with the costly requirement of appearing through counsel in these proceedings,

other services will likely be reduced or eliminated.[3]

Finally, in considering whether to adopt a rule, this Court must consider the fiscal impact of its decision upon the State. An informed policy maker should consider the cost impact of any decision. It is not disputed that requiring HRS to comply with the proposed advisory opinion will be expensive. Dispute exists about whether HRS would hire attorneys, could force the State Attorney to represent it or could force the Attorney General to provide representation. Regardless of where the attorneys come from, a large price tag is attached. This Court in, In The Interest of D.B., recognized that the system could be crushed by

> the combined weight of taxpayer expense for multiple legal representation and expansion of the process into more formalized adversary legal proceedings. The State might choose not to supply this protection for children unless or until a criminal abuse had occurred.

385 So.2d at 94.

The cost impact to the State is a factor which this Court must consider in determining whether to authorize current practice.

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[3] Services which are presently provided by licensed child placing agencies include the provision of medical care and maternity home care for pregnant women, foster care for children being placed for adoption, counseling services to birth mothers and adoptive families, and support and supplemental services provided to children in the custody of HRS.

B. Other Options.

1. This Court should appoint a Special Master or a Task Force.

HRS does not dispute that problems exist in the dependency process and is committed to remedying those problems. HRS disagrees with the Unlicensed Practice of Law Committee over how those problems arose and how they should be resolved. These problems, however, do not stem from HRS counselors "practicing law." They come from an inadequately funded social service system. Ordering HRS to appear only through counsel will not improve the system and will likely make it worse.

This Court is faced with a decision which will have a significant impact upon the citizens of the State of Florida. The department submits that the "Record" in this case is insufficient for the Court to make an informed judgment. The Committee heard testimony from five persons. No one has systematically studied the current practice or offered reasoned alternatives. The Committee heard testimony from Judge Gladstone about his courtroom. The Committee and Florida Legal Services have attempted to supplement the record with other cases (See HRS' motion to strike). Nothing suggests that Judge Gladstone's court is typical. While the Unlicensed Practice of Law Committee refers to Judge Graziano's Administrative Order 87-02-G from Volusia County in the Seventh Judicial Circuit, there was no record to support the findings made there. Additionally, that Administrative Order has been declared null and void.

If this Court should find that HRS counselors are engaged in the unauthorized practice of law, the suggestion of Florida Legal Services for a Special Master is in order. They suggest that this Court take additional testimony, appoint a Study Commission or appoint a Special Master. FLS brief at 13. If counselors should be found to be engaged in the unauthorized practice of law, this Court should carefully study the long term solution. Immediately requiring HRS to appear through counsel will put the dependency system in chaos. Referral to a special master or appointment of a task force would be appropriate to study long term solutions to the problem.

2. Make the State Pay

The Unlicensed Practice of Law committee suggests that no one can predict whether the Legislature will fund new lawyers for HRS. If history is any guide, it is clear that either the Legislature will refuse to fund lawyers for HRS or fund it inadequately.

Florida Legal Services suggests that the judiciary can compel the Legislature to expend money to pay for attorneys for HRS since a fundamental right is involved.[4] It is clear that the Court seldom exercises such power. For instance each year this Court certifies that a number of new judges are needed for the forthcoming fiscal year. See Rule 2.035, Fla. R. Jud. Admin. Yet when the Legislature does not appropriate sufficient money for all the new judgeships, this Court does not force the

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[4] But the issue in this case affects a regulatory agency and not the fundamental right of private individuals.

Legislature to do so. If this Court has the authority to force the Legislature to expend money for lawyers for the dependency process, there are many other areas where this Court should force the Legislature to appropriate funds. For instance, long waiting lists exist for many HRS services. The Legislature has not provided full funding for many other needed services.

C. Conclusion Regarding Rules

The Court must consider what the real issue is before it, that is, are counselors engaged in the unauthorized practice of law. The Court should recognize that much of the argument before it goes beyond the basic question of whether these workers are practicing law. Judge Gladstone admits that

> Most of what I am decrying here is not attributable to HRS, it is attributable to a public that really doesn't give too much of a darn about children and a Legislature that is so hypocritical as to say the department will be doing this and that and the other thing and not fund what they have said for the department to do.

App. C at 94

It is suggested that if there were sufficient numbers and sufficiently trained HRS counselors this issue would never have arisen from Judge Gladstone. The real problem in this case lies with an inadequately funded social service system. Forcing HRS to appear through counsel will not address the underlying problem and will turn a system with some problems into chaos.

CONCLUSION

The dependency process has been and should remain nonadversarial.

Dependency counselors are engaged in an important public function, but are not engaged in the unauthorized practice of law.

If this Court determines that HRS is engaged in the unauthorized practice of law, it is faced with an important public policy decision. It should adopt a rule which would authorize current practice at least until other alternatives can be explored.

For all the reasons stated, HRS asks this Court to disapprove the proposed advisory opinion.

Respectfully submitted this 24th day of August, 1987.

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CERTIFICATE OF SERVICE

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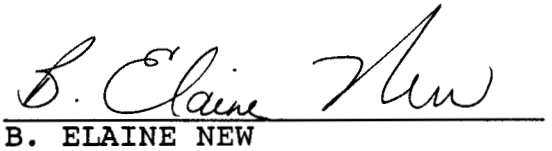

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