OA ~~3-8-91~~ 047

IN THE SUPREME COURT
OF FLORIDA

MARY LOUISE THAYSEN,

Petitioner,

vs. CASE NO. 76,136

DONALD J. THAYSEN,

Defendant.
_____/

PETITIONER'S INITIAL BRIEF

An Appeal From The
Third District Court of Appeal

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PRELIMINARY STATEMENT

Petitioner, **MARY LOUISE THAYSEN**, will be referred to herein as Mary Thaysen.

Respondent, **DONALD J. THAYSEN**, will be referred to herein as Donald Thaysen.

Reference to the record on appeal will be as follows: R- followed by the appropriate page number.

Reference to the appendix will be as follows: A- followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On April 11, 1985, a Final Judgment for Dissolution of Marriage was entered which adopted and approved a Marital Settlement Agreement entered into by the parties. (R-13) Thereafter, Mary Thaysen filed a Petition for Modification of Final Judgment by which she sought an increase in the amount of child support paid by Donald Thaysen. (R-15-17) There is no dispute that at the time the Petition was filed and during the subsequent litigation that Donald Thaysen was current in the payment of his child support obligation.

Within her Petition at paragraph 9, she alleged that the State of Florida, Department of Health and Rehabilitative Services, Office of Child Support Enforcement was a proper party to the modification action pursuant to Title IV-D of the Social Security Act and section 409.2564(5), Fla. Stat. (1987). (R-16)

Donald Thaysen filed an Answer, Affirmative Defenses and Motion To Dismiss in response to the Petition. (A-1-2) At paragraph 5 of his Affirmative Defenses, Donald Thaysen states:

> The State Attorney's office is NOT acting lawfully or within the purview of section 409.2564(5), and should be disqualified from otherwise acting, at the taxpayers' expense, in a purely private, civil matter, where Petitioner herself can pay her own way, and is merely seeking an increase in support without legal basis.

(A-2)

The issue of the State Attorney's authority to participate in the modification action on behalf of Mary Thaysen came before the trial court for hearing in April, 1989. The trial court initially entered an order granting Donald Thaysen's Motion to Dismiss and his request that the State Attorney be disqualified from participating in the modification action. (R-31) The disqualification provision of the order was stayed twenty days to allow the State Attorney to further investigate its authority under chapter 409 to participate in the action on Mary Thaysen's behalf. (R-31)

Thereafter, the State Attorney filed its Motion to Conform To Order of April 20, 1989. (A-4-7) The State Attorney set forth the basis for its claim that it was authorized by statute to participate in the action. (A-4-7)

The trial court subsequently entered an Order Disqualifying State Attorney Representation. (A-8) The order states that allowing the State Attorney to participate in the modification action would be "contrary to the purpose and intent of the statute being traveled upon." (A-8) The trial court additionally made findings as to the legislative intent of the subject statute as follows:

> 2. The court finds that the Statute was enacted to assist mothers to collect

> delinquent support from defaulting fathers, or fathers who have run to avoid paying support, and not for the purpose of helping private parties to obtain an increase under the circumstances of this case, and at the expense of taxpayers.

(A-8)

The foregoing order was timely brought before the Third District Court of Appeal for review. On February 13, 1990, the Third District Court rendered a decision which denied Mary Thaysen's petition for writ of certiorari. Thaysen v. Thaysen, 559 So.2d 626 (Fla 3rd DCA 1990). The Thaysen court recognized that its decision is in conflict with Wilkerson v. Coggin, 552 So.2d 348 (Fla. 5th DCA 1989).

On the basis of the express conflict between Thaysen and Wilkerson, Mary Thaysen filed with this Court her Notice to Invoke Discretionary Jurisdiction.

SUMMARY OF ARGUMENT

The Third District Court of Appeal erred in holding that HRS, through the State Attorney's Office, does not have standing to represent Mary Thaysen in a child support modification action. The district court incorrectly ruled that HRS' services pursuant to section 409.2551 et seq. are only available to a custodial parent when the non-custodial parent is failing to support the minor child.

Section 409.2567, Fla. Stat. (1989) states that HRS shall provide child support services on behalf of all dependent children to both AFDC and non-AFDC recipients. This statute was enacted pursuant to the requirements of 42 U.S.C. 654(a). A dependent child is defined as any unemancipated person under age 18. Section 409.2554(2), Fla. Stat. (1989).

To determine the support services HRS must make available to AFDC and non-AFDC clients, it is necessary to look to section 409.2561(1), Fla. Stat. (1989). The statute states that HRS "may apply for modification of court order..." If HRS makes modification services available to AFDC clients, it must also make such services available to non-AFDC clients. Carter v. Morrow, 562 F.Supp. 311 (W.D. N.C. 1983). These services have been determined to include support modification services. State Ex Rel. Jeske v. Jeske, 424 N.W.2d 196 (Wis. 1988).

The district court's decision below is in clear conflict with the plain language of section 409.2567 and the requirements of federal law. Therefore, it should be reversed.

ARGUMENT

THE STATE OF FLORIDA, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, HAVE THE STATUTORY AUTHORITY TO REPRESENT A CUSTODIAL PARENT BY BRINGING A PETITION ON THE PARENT'S BEHALF TO MODIFY A PREVIOUSLY ENTERED CHILD SUPPORT ORDER WHEN NEITHER THE CUSTODIAL PARENT NOT THE MINOR CHILD RECEIVES PUBLIC ASSISTANCE AND THE NON CUSTODIAL PARENT IS NOT IN ARREARS IN HIS CHILD SUPPORT OBLIGATION.

The dispute in this case arises from the fact that Mary Thaysen was represented in a child support modification action by the State Attorney's Office of the Eleventh Judicial Circuit. The State Attorney's Office was involved in the modification action pursuant to a contract it has with the State of Florida, Department of Health and Rehabilitative Services (HRS), to provide personnel to represent HRS in cases arising under the child support enforcement program as set forth in sections 409.235 et seq., Fla. Stat. (1989). Donald Thaysen contends that the State Attorney's Office and, therefore, HRS, lack the authority to represent in actions to modify a support order, a custodial parent who does not receive public assistance benefits for the minor child when the obligor is current in his previously ordered child support payments.

The Third District Court of Appeal agreed with Donald Thaysen and the trial court that the State Attorney, acting on

behalf of HRS, did not have standing to participate in the modification action. Thaysen v. Thaysen, 559 So.2d 626 (Fla. 3rd DCA 1990). In reaching this decision, the district court construed section 409.2551, Fla. Stat. (1987). The district court interpreted the statement of legislative intent set forth in section 409.2551 as a declaration that the child support enforcement provisions of Chapter 409 were:

> ....added to Florida law to assist in the "....enforcement of support..." in cases involving the above referred to "...family desertion and non-support of dependent children..." where the payor is not current in making court ordered child support payments.

Thaysen at 627.

The district court went on to further state:

> It does not appear to have been the intent of the Legislature to either burden the already over-burdened Department of Health and Rehabilitative Services or to deplete the personnel resources of the State Attorney's Office by requiring either, or both, of them to replace the use of privately retained counsel in civil proceedings that are private in nature, and which do not involve any allegations of child neglect, desertion, abandonment, or non-support.

Id at 627.

Petitioner contends that HRS does have the authority to represent a custodial parent seeking child support modification

when neither the parent nor child receives public assistance and the obligor is not delinquent in his support payments. In ruling otherwise, the district court erred.

HRS contends that its participation in the modification action is authorized by 42 U.S.C. section 654 and section 409.2567, Fla. Stat. (1989). In order to address the issues raised by this appeal, review of the child support enforcement program is warranted.

The Congressional History And
The Purpose Of The Program.

AFDC (Title IV-A of the Social Security Act), is a federal - state cooperative effort administrated by the states. The AFDC program, created by the Social Security Act of 1935, provides monetary payments from the state to financially needy families which include children deprived of parental support due to death, disability, or desertion. 42 U.S.C. Section 601.

States are not required to participate in the AFDC program. However, if they chose to do so, they must operate a program which meets the statutory requirements in 42 U.S.C. Section 602, as well as the provisions of detailed federal regulations promulgated by the Secretary of Health and Human Services. See 45 C.F.R. Sections 201, et seq.

An explicit condition for the receipt of federal AFDC money is that participating states have in effect a plan for child support enforcement which meets the criteria set forth in Title IV-D of the Social Security Act, 42 U.S.C. Sections 651, et seq. The State must operate a child support enforcement program in substantial compliance with that plan.

In 1974, Congress amended the Social Security Act by adding Title IV, Part D, Pub. L. No. 93-647, 88 Stat. 2351 (codified as amended at 42 U.S.C. sections 651, et seq.). Title IV-D established a Child Support Enforcement Program, "[f]or the purpose of enforcing the support obligations owed by absent parents to their children..." 42 U.S.C. Section 651 (1973).

The IV-D program was set up as an intergovernmental operation involving federal, state, and local governments, with the states having primary responsibility for administering the program. In Florida, the Department of Health and Rehabilitative Service supervises the program and provides the services.

The Act requires each state to develop and adopt, with federal approval, a plan for the delivery of IV-D services, and spells out in considerable detail what the plan must contain. 42 U.S.C. Section 654. Once the plan is approved, the federal government will reimburse the state for a percentage of the costs

incurred in providing IV-D services. 42 U.S.C. Section 655 (a).

Although the primary focus of the IV-D program is on AFDC recipients, the Act clearly provides that services offered by the IV-D program are to be made available to anyone who applies for them. This change occurred with the Social Security Amendments of 1974, Pub. L. 93-647, 88 Stat. 2351 (codified as amended at 42 U.S.C. Sections 652 et seq.).

Changes were again made to the Social Security Act with the Child Support Enforcement Amendments of 1984, Pub.L. 98-378 (the 1984 amendments), 98 Stat. 1305 (codified at 42 U.S.C. Sections 651, et seq.). These amendments required participating states to pass laws allowing for mandatory wage withholding and continuing garnishments, wage assignments, and use of liens. 42 U.S.C. Sections 654(20) and 666.

The 1984 Amendments were intended to ensure that "all children in the United States who are in need of assistance in securing financial support from their parents will receive assistance regardless of their circumstances." S.Rep. No 98-387, 98th Cong., 2d Sess., at 1, reprinted in 1984 U.S. Code Cong. & Admin. News, 2397,2397 (emphasis added). Congress again mandated that Title IV-D child support services be provided to both AFDC and non-AFDC recipients. 42 U.S.C. Sections 651 and 654(6).

The Senate report on the 1984 amendments states the following:

> There is no language in the purpose clause spelling out that services are to be provided to both AFDC and non-AFDC families. However, there is a specific provision elsewhere in the Statute requiring that the child support collection or paternity determination services established under a state's child support program "shall be made available to any individual not otherwise eligible for such services upon application filed by such individual..." The Committee is proposing to add language to the present clause as follows: "and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is request." This language will make clear the Committee's intent that the Administration and the States fully implement the provision in present law that requires the States to make available to non-AFDC families the services that are provided under the State program for AFDC families." S.Rep. No. 387, 98th Cong., 2d Session, reprinted in 1984 U.S. Cod Cong. & Admin.News at 2418. (Emphasis added).

The foregoing amendment to the "purpose" section of Title IV-D (42 U.S.C. Section 651) was intended to reinforce the language of 42 U.S.C. Section 654(b), so that assistance in obtaining support would be provided to non-AFDC families. State Ex Rel. Jeske v. Jeske, 424 N.W.2d 196 (Wis. 1988).

The foregoing summary was gathered primarily from the cases

of Wehunt v. Ledbetter, 875 F.2d 155 (11th Cir. 1989), and Carter v. Morrow, 562, F.Supp. 311 (W.D. N.C. 1983).

Florida has chosen to opt into the federal AFDC program. Section 409.235, Fla. Stat. (1989).

> If a state elects to participate in the AFDC program, it must operate its program in accordance with the provisions of Title IV. Florida participates in the AFDC program under an approved state plan.

Ealey v. Holt, 523 So.2d 173,174 (Fla. 1st DCA 1989). Florida is required to comply with all federal laws, statutes, and regulations that control the AFDC program. Pond v. Dept. of HRS, District 7, Orange County, AFDC Unit #18, 503 So.2d 1330 (Fla. 1st DCA 1987). See also; King v. Smith, 392 U.S. 309, 88 88 Ct. 2128, 20 L.Ed.2d 1118 (1968); Simpson v. Miller, 535 F.Supp. 1041 (N.D Ill.)

> State regulations concerning AFDC programs cannot contravene the federal law and valid federal regulations implementing those programs. (Citation omitted). In cases of conflict, the state regulations are rendered invalid by the Supremacy Clause of the United States Constitution. Townsend v. Swank, 404 U.S. 282, 92 S.Ct. 502, 30 L.Ed.2d 448 (1971).

Barela v. New Mexico Department of Human Services, Income Support Division, 609 P.2d 1244, 1246 (Ct. App. N.M. 1979)

The Social Security Act is a remedial statute. Chaffin v.

Taylor, 521 F.Supp. 1344 (M.D. Fla 1981). Accordingly, the statute and the regulations dealing with the administration of Title IV-D should be interpreted broadly and liberally to effectuate their central purposes.

Florida administers its child support enforcement program, in accordance with the mandates of Title IV-D, pursuant to sections 409.235 through 409.259, Fla. Stat. (1989). Pursuant to section 409.2567, Fla. Stat., HRS contends it has standing to represent non-assistance clients in child support modification actions, even when the obligor is current in his support obligation. The Third District Court's decision to the contrary is not in accord with the plain language of chapter 409.

Section 409.2567 states in pertinent part:

> All support and paternity services provided by the department shall be made available on behalf of all dependent children. Services shall be provided upon acceptance of public assistance or upon proper application filed with the department.

There is no limitation in this section in the provision of services of the type found by the Third District Court in its interpretation of section 409.2551.

In fact, the Third District Court did not even address section 409.2567, although such section is the sole statutory

provision addressing the availability of HRS' child support enforcement services to persons not receiving public assistance. Instead, the district court chose to construe section 409.2551, which is the legislative intent provision of the child support enforcement laws.

It is respectfully suggested that the district court's construction of section 409.2551 to resolve this matter was incorrect in light of the clear and unambiguous meaning of section 409.2567.

> While legislative intent controls construction of statutes in Florida, Griffis v. State, 356 So.2d 297 (Fla. 1978), that intent is determined primarily from the language of the statute. S.R.G. Corp. v. Department of Revenue, 365 So.2d 687 (Fla. 1978). The plain meaning of the statutory language is the first consideration.

St. Petersburg Bank & Trust Co. V. Hamm, 414 So.2d 1071 (Fla. 1971). The district court's belief that it could not have been "the intent of the Legislature to either burden the already over-burdened Department of Health and Rehabilitative Services or deplete the personnel resources of the State Attorney..." by authorizing HRS to appear in modification actions on behalf of non-welfare clients is insufficient to overcome the plain meaning of section 409.2567. Id. Again, section 409.2567 states:

> All support.... services provided by the department shall be made available on behalf of all dependent children. (Emphasis Added).

Since the legislative intent is clearly manifest by the language used in section 409.2567, the rules of construction and interpretation the district court used concerning section 409.2551 are unnecessary and inapplicable. Clark v. Kreidt, 199 So.33, 145 Fla. 1 (Fla. 1941).

Section 409.2567 is clear on its face. There is no ambiguity. If the language of a statute is clear and unequivocal, then legislative intent must be derived from words used without involving incidental rules of construction or engaging in speculation as to what judges might think that legislators intended or should have intended. Tropical Coach Line, Inc. v. Carter, 121 So.2d 779 (Fla. 1960). The failure of the district court to review section 409.2567 and instead construe section 409.2551 actually created doubt as to meaning of the statute. However, the rules of statutory construction should never be used to create doubt, only remove it. State v. Egan, 287 So.2d 1 (Fla 1973). Since section 409.3567 is unambiguous, the district court should not have superimposed its view as whether it was the intent of the Legislature to either burden the already over-burdened Department

of Health and Rehabilitative Services or to deplete the personnel resources of the State Attorney's Office." Wagner v. Botts, 88 So.2d 611 (Fla. 1956).

Section 409.2567 is explicit on its fact that all support services provided by HRS are to be made available on behalf of all dependent children. The original statutory definition of "dependent" child has been specifically changed by the Legislature over the years. Prior to 1986, dependent child meant:

> ...any person under the age of 18, or under the age of 21 and still in school, who has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of parent. (Emphasis added.)

Section 409.2554(2), Fla. Stat. (1985)

However, pursuant to modification enacted in 1986, the definition of dependent child has been substantially changed. No longer must a child be "deprived of parental support" as the result of a parent's "continued absence from the home" in order to be considered dependent for the purpose of the application of chapter 409. Dependent child now is defined as:

> .....any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacited when such incapacity began prior to such person reaching the age of 18. The definition shall not be construed to

> impose an obligation for child support beyond the child's' attainment of majority except as imposed in S. 409.2561.

Section 409.2554(2), Fla. Stat. (1989).

The district court's limitation of the applicability of chapter 409 to cases involving family desertion and non support is contrary to the clear language of the statute. Since section 409.2567 mandates that all support services provided by HRS must be provided to all dependent children, those support services must be made available to "any unemancipated person under the age of 18..." Section 409.2554(2). In the present action, that is just what HRS was doing through the State Attorney's Office.

As previously stated, 42 U.S.C. 654 requires the states which partake in he AFDC program to make the Title IV-D services available to AFDC and non-AFDC recipients. Florida enacted section 409.2567 in response to the federal requirements. Since section 409.2567 makes support services available to all dependent children, and dependent children as defined by the statute is broadly inclusive of all minor children, it is necessary to determine from where the authority arises for HRS to act on behalf of a dependent child in a modification action.

Section 409.2561 sets forth the many child support services available to a recipient of public assistance. The authorized services include representation in modification proceedings.

> The department may apply for modification of a court order on the same grounds as either party to the cause and shall have the right to settle and compromise actions brought pursuant to law.

Section 409.2561(1). Clearly, HRS has statutory authority to represent public assistance recipients in modification actions.

Section 409.2567 requires HRS to provide its services on behalf of all dependent children "upon acceptance of public assistance or upon proper application filed with the department." (Emphasis added.) Therefore, all services available to those eligible for public assistance must also be made available to those not receiving public assistance. This must clearly include services for the prosecution or defense of modification actions.

If there is a question as to whether a child support modification action falls under such "support and paternity determination services provided by the department" (section 409.2567), that issue has been addressed by this Court in Lamm v. Chapman, 413 So.2d 749 (Fla. 1982).

In construing section 409.2561, this Court stated that the section sets forth procedures "....whereby the state is authorized to fulfill its responsibilities both to dependent children and to the taxpayers." Id at 752. Additionally, "the

acceptance of public assistance effects an assignment to the state of the recipient's interest in child support...and allows the state to act for the recipient in all matters relating to child support..." Id at 752. It cannot be logically argued that a modification action is not a matter relating to child support. This was recognized by the Fifth District Court in Wilkerson v. Coggin, 552 So.2d 348 (Fla. 5th DCA 1989).

Since section 409.2561 authorizes HRS to participate on behalf of public assistance recipients in "all matters related to child support", Lamm, supra, prosecution or defense of a modification action must be viewed as part of the "support....services provided by the department..." Section 409.2567. Accordingly, since HRS provided modification services to AFDC clients, HRS has the statutory authority to appear on behalf of non-assistance recipients in modification actions "upon proper application filed with the department." Section 409.2567.

In promulgating rule 1.481, Fla.R.Civ.P., this Court also recognized as it did in Lamm that child support actions include modification actions. The rule specifically states:

> (b) Scope. This rule shall apply to proceedings for the establishment, enforcement, or modification of support wherein the party seeking support is receiving services pursuant to Title IV-D of the Social

> Security Act (42 U.S.C. section 651 et seq.) and to non-Title IV-D proceedings....

Rule 1.491(b), Fla.R.Civ.P. The foregoing is further recognition that child support modification related services are services to be provided by HRS pursuant to Florida's requirement under Title IV-D. These services are equally available to non-AFDC clients. Section 409.2567.

In its decision in this case, the district court, albeit in dicta, commented upon the allocation of scarce resources by the State Attorney's Office and HRS. However, in determining how such resources should be properly allocated, the district court violated the separation of powers between the legislature and judiciary by passing on the wisdom of enacted law.

Further, section 409.2567 specifically states that the "department shall adopt rules to provide for the recovery of administrative costs, including the application fees, from the obligor. The obligor is responsible for all administrative costs." The administrative costs as defined by section 409.2554(11) "means any costs, including attorney's fees...." Therefore, the concern voiced by the district court regarding the utilization of limited resources did not take into account the fact that chapter 409 provides for the recovery of the cost of representing non-assistance clients in IV-D actions.

It is anticipated that respondent will argue as he did before the district court that Mary Thaysen should be prohibited from representation by HRS through the State Attorney's Office based upon the fact that Mary Thaysen received a payment of approximately $100,000.00 pursuant to the parties' dissolution settlement agreement shortly before applying for HRS child support services.

However, that argument does not justify finding Mary Thaysen is not entitled to such services when the statute clearly states otherwise. Again, this is a matter of legislative concern. It is the Legislature's place to determine the criteria, in accordance with federal law, for making child support services available to non-assistance clients. Presently, there is no limitation regarding HRS' services based upon an individual's income or assets. Section 409.2567 broadly requires that HRS' services be made available on behalf of all dependent children. It would be improper for the judicial branch to substitute its judgment for that of the Legislature and limit the availability of the services mandated by section 409.2567 based upon a client's income or assets without a clear statutory basis for doing so. Accordingly, respondent's argument otherwise should be rejected. By providing services to Mary Thaysen, HRS was

complying with its mandate under section 409.2567, as required by 42 U.S.C. 654(6)(A).

The question of the meaning of child support has also been addressed by this Court in Koon v. Boulder County, Department of Social Services, 494 So.2d 1126 (Fla. 1986). In Koon, this Court defined that duty of support as a continuing obligation to provide reasonable support commensurate with the need and abilities of the parties and the child. Although the present case is not a UREAS action as was Koon, this Court's finding in Koon that the obligation of child support necessarily included that the ability to modify the support order to maintain adequate child support is clearly applicable to the issue of this case.

The authority of a state social services agency to represent a non-assistance client in child support actions pursuant to Title IV-D has been addressed by other jurisdictions, both state and federal.

The leading case on this issue appears to be Carter v. Morrow, 562 F.Supp. 311 (W.D.N.C. 1983). In Carter, an action was brought against the North Carolina Department of Human Resources by non-AFDC clients who claimed the state was not providing them the same child support services provided AFDC clients. Although it appears the services North Carolina failed

to provide were child support collection services, the discussion in Carter of the federal laws related to the Title IV-D program is applicable.

> The program defendants would like to implement is not the program Congress created. For reasons already discussed, Congress required the states to make available to non-AFDC recipients "the child support collection or paternity determination services established under the [state IV-D] plan..." 42 U.S.D. section 654(6)(A) (emphasis added). These words are clear and unequivocal: the state IV-D programs must provide to non-welfare clients the services - not some other services - afforded to persons receiving welfare. Nothing in Title IV-D or its legislative history contradicts this plain reading of the statutory language.
>
> The court finds that Congress clearly intended for non-recipients of AFDC to receive the same IV-D services as AFDC recipients, subject to the limitation of section 654(6)(B) & (C). Congress did not intend for the states to provide non-welfare families only "some" of the IV-D services, or to attempt, under federal supervision, to achieve "comparable" results for these families through means other than those used in AFDC cases.

Id at 315.

Pursuant to section 409.2567, HRS provides to non-welfare clients, including Mary Thaysen, the services afforded welfare clients, including child support modifications services. The district court's decision that modifications services are not

available to non-assistance clients is contrary to federal requirement, and puts Florida's plan in jeopardy of being found by the federal government as out of compliance with federal program requirements. See also; State v. Wagner, 400 N.W. 2d 519 (Wis.App. 1986); South Carolina Department of Social Services v. Deglman, 351 S.E.2d 864 (S.C. 1986); Colorado Division of Employment and Training v. Wells, 693 P.2d 1029 (Colo. App. 1984).

Several states have specifically addressed the issue of the authority of the state to represent non-AFDC clients in child support modification actions. The Wisconsin case of State Ex Rel. Jeske v. Jeske, 424 N.W. 2d 196 (Wis. 1988), addresses in detail the application of federal law to this issue.

In Jeske, it was undisputed, just as in the present case, that the custodial parent did not receive any public assistance benefits. Furthermore, the obligor-father was in compliance with his child support obligation.

The Jeske court analyzed the various federal statutes and regulations which address the equalization of services between AFDC and non-AFDC recipients. The court concluded:

> Because the state plan requires the child support agency to represent AFDC clients in their modification efforts, we conclude that under 42 U.S.C. section 654, this

> representation is one of the child support collections services which must be made available to non-AFDC clients.

Id at 200.

> .....because the state legislature has chosen to extend these services to AFDC clients when appropriate, it must, consistent with 42 U.S.C. section 654 (6)(A), offer the same services to non-AFDC parents.

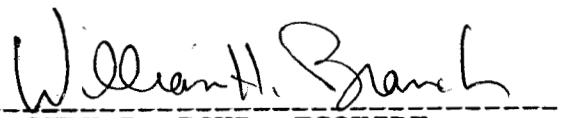
Id at 201.

See also; Worth v. Superior Court, 207 Cal.App.3d 1150, 255 Cal.Rptr, 304 (Cal.App. 1989); Krogstad v. Krogstad, 388 N.W. 2d 376 (Minn.App. 1986).

The district court's interpretation of the child support enforcement program provisions of chapter 409 is contrary to the plain language of the statute. Furthermore, the district court's decision conflicts with the requirements of federal law. A clear statement is needed from this Court that HRS and, in this particular case, the State Attorney's Office through its contract with HRS, has standing to represent non-assistance clients in child support modification actions even where the obligor is current in his or her child support obligation.

CONCLUSION

Petitioner respectfully requests this Honorable Court reverse the district court's decision and hold that HRS has standing to represent non-AFDC clients in child support modification actions even where the obligor is current in his or her child support obligation.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to **MELVIN A. RUBIN, ESQUIRE,** 2627 Biscayne Boulevard, Miami, Florida 33137, and **FRANK M. MARKS, ESQUIRE,** 141 N.E. 3rd Avenue, 10th Floor, Miami, Florida 33132 this 2nd day of January, 1990.

William H. Branch

WILLIAM H. BRANCH, ESQUIRE