

oppaga Special Report



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Report No. 04-05

Child Welfare Legal Services Should Be Provided by DCF or Private Law Firms

at a glance

Child Welfare Legal Services attorneys represent the Department of Children and Families (DCF) at each stage of dependency proceedings. We examined four options for providing this service: contracting with other government entities, for-profit law firms, and not-for-profit entities, and retaining the service within DCF.

We concluded that there are two feasible options—contracting with private law firms and retaining the function within DCF. Transferring the responsibility to state attorneys or the Attorney General is not feasible because they do not wish to expand their involvement in the function. Contracting with lead agencies is not feasible as it would create potential conflicts of interest.

Contracting with private law firms would have uncertain cost impacts. If the service is retained within DCF, the department should take steps to improve staff professional development and accountability. The department also should adopt best practices to improve the services regardless of how they are provided. The Legislature also should consider clarifying whose interests are represented by CWLS attorneys in dependency proceedings.

Scope

Chapter 2003-146, *Laws of Florida*, directs OPPAGA to evaluate different models for providing child welfare legal services, including government, not-for-profit, and for profit entities.

Background

Chapter 39, *Florida Statutes*, places responsibility for protecting children in the dependency system with the Department of Children and Families (DCF). When someone suspects that a child is being abused or neglected, he or she can report it to the department's abuse hotline. The department investigates the child's safety and determines if protective services are needed. The findings of the investigation are used to determine whether the child should remain with his or her parents or other family members or be removed from the home.

A 1989 Florida Supreme Court opinion required adequate legal representation on behalf of the Department of Health and Rehabilitative Services (now DCF) at every stage of dependency proceedings conducted under Chapter 39, *Florida Statutes*.¹ In conformance with this stipulation, Ch. 39, *Florida Statutes*, requires Child Welfare Legal Services (CWLS) attorneys to represent the Department of Children and Families during the various stages of dependency proceedings (see flowchart in Appendix A).

¹ The Florida Bar Re: Advisory Opinion HRS Nonlawyer Counselor, 547 So. 2d 909, 1989.

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CWLS attorneys are considered to represent the state because they represent the Department of Children and Families. CWLS attorneys perform the activities noted below.

- Advise investigators, caseworkers, and administrators regarding legal sufficiency for shelter, dependency, and termination of parental rights petitions and other issues.
- Supervise the preparation of or prepare and sign all legal documents such as petitions, pleadings, motions, discovery requests, case plans, affidavits of diligent search, affidavits under the Uniform Child Custody Jurisdiction Act, predispositional reports, judicial review social studies, certificates of service, and notices of appeal.
- Provide legal expertise to caseworkers in case staffings and conferences.
- Attend all court hearings.
- Participate in dependency mediation.
- Represent the department in contested adoptions and the state in appellate proceedings.
- Train investigators and caseworkers regarding their legal responsibilities.

Attorneys also have primary responsibility for meeting federal and state statutory requirements such as case processing timelines. Failure to meet these requirements jeopardizes the state's ability to achieve permanency for children and federal funding for out-of-home care.

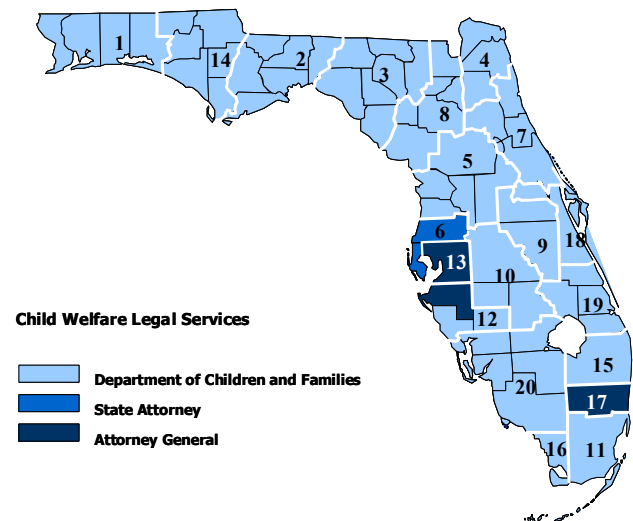
Several problems have historically impeded the effectiveness of the CWLS function. In the 1990s several oversight groups identified problems with the delivery of CWLS, including high caseloads, poor case documentation, unmet statutory time frames, insufficient training, low salaries, high turnover, poor supervision and friction between caseworkers and attorneys.²

Several entities provide CWLS. In response to these concerns, the Legislature considered

changing the organizational placement of CWLS personnel. The 1996-97 General Appropriation Act established three pilot projects with the Office of the Attorney General in the 17th Judicial Circuit and with the state attorneys for the 8th and 16th Judicial Circuits.^{3,4}

The Department of Children and Families continues to provide the CWLS function in the majority of counties and judicial circuits through in-house attorneys. It contracts with the state attorney for Pinellas and Pasco counties to provide CWLS for the 6th Judicial Circuit, and with the Office of the Attorney General to provide these services in Hillsborough, Manatee and Broward counties, Circuits 12, 13, and 17. (See Exhibit 1.) The pilot projects in the 8th and 16th Judicial Circuits are no longer in operation.

Exhibit 1 DCF Provides Child Welfare Legal Services in Most Judicial Circuits



Source: OPPAGA analysis.

The Legislature appropriated \$38.6 million for CWLS in Fiscal Year 2003-04. (See Exhibit 2.)

³ Chapter 96-424, *Laws of Florida*.

⁴ OPPAGA evaluated the pilot sites in a 1997 report and found varied results, while cautioning that it was too soon to determine effectiveness of changing the organizational placement of the CWLS function. *Evaluation of Child Welfare Legal Services Pilot Projects*, [Report No. 96-44](#), OPPAGA.

² 1990-91 Attorney General Oversight Report, 1992 Oversight Follow-up Report, and the Senate Select Subcommittee on CWLS.

This represents a 14.3% increase from the previous year; the additional funding provides contract employees to address increased caseloads for CWLS attorneys.

Exhibit 2

Fiscal Year 2003-04 CWLS Funding and Positions

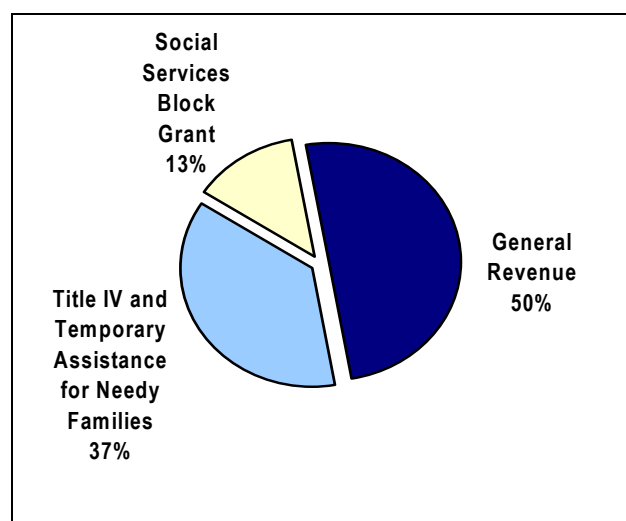
Provider	Funding	Attorneys	Support Staff	Total Positions	Total Authorized FTEs
DCF	\$25.20 million	253	121	374	431.5
Attorney General	\$6.10 million	69	50	119	119
State Attorney	\$2.90 million	22	14	36	47
Contract Services	\$4.40 million	N/A	N/A	N/A	N/A
Total	\$38.60 million	344	185	529	597.5

Source: OPPAGA analysis.

Funding for CWLS is a combination of state and federal funds. (See Exhibit 3.)

Exhibit 3

Half of CWLS Funding Is Federal



Source: OPPAGA analysis.

During the 2002-03 fiscal year, CWLS attorneys were involved in legal proceedings for over 42,000 active dependency cases. The average caseload per attorney was 122 cases.

Findings

We examined the feasibility of four models for providing child welfare legal services, including

- transferring responsibility to another government agency,
- contracting with not-for-profit entities,
- contracting with for-profit entities, such as private law firms, and
- retaining the function within the Department of Children and Families.

We also identified several best practices that should be implemented statewide to improve program effectiveness regardless of the delivery model.

Transferring the CWLS function to other government entities is not feasible

In this option, the responsibility for providing CWLS would be transferred to another government entity that provides legal services; this could include the Attorney General, state attorneys, or public defenders.

This option is not feasible. While the Attorney General provides child welfare legal services in two areas of the state, the current Attorney General believes that this is not a core function of his office and is therefore not interested in expanding the function beyond the three counties his office currently serves. Similarly, while the state attorney of the 6th Judicial Circuit provides these services in Pinellas and Pasco counties, other state attorneys have not shown an interest in providing CWLS, in part, because they too consider the function outside their core mission and they are concerned about funding levels.

Transferring CWLS to the public defenders is not feasible as it would create a conflict of interest. Florida law mandates that public

defenders represent indigent parents who are criminally charged with abuse or neglect.⁵ Therefore, professional ethics that prohibit law offices from representing both sides in a legal action prevent public defenders from representing both the interests of the parents and the state in dependency hearings.

Contracting with a not-for-profit entity to perform the CWLS function is not feasible

In this option, the state would contract with a private not-for-profit entity for child welfare legal services. This could include the Legal Services Corporation or the community-based care lead agencies that are assuming responsibility for providing child welfare services. We concluded that this option is also not feasible as it would create conflicts of interest.

Legal Services Corporation. The Legal Services Corporation and its 12 independent agencies statewide are the only private, not-for-profit entities currently providing legal services in Florida. This federally funded program is required to provide civil legal assistance to low-income people. Since this assistance includes representing clients in actions against the state, having the corporation represent the state in dependency proceedings would create a conflict of interest similar to that of the public defender option. In addition, under contracts with local courts, some local legal services programs represent parents or children in dependency proceedings, which also would create a conflict of interest.

Community-based care lead agencies. As directed by legislative initiatives to privatize child protection program services, community-based care lead agencies are assuming responsibility for providing foster care and related services through a network of local service providers. We explored several alternatives for structuring legal services but concluded that none were feasible and that

Florida Bar Rules of Professional Conduct for attorneys preclude this option.

It would not be feasible for lead agencies to use lawyers on their staffs for CWLS because lawyers employed or retained by an organization represent the organization.⁶ If the CWLS function was performed by lead agencies staff, these attorneys would represent the interests of the lead agency, which is paying them, and not the state. In those cases in which the lead agency's interest may diverge from the state's interest, the attorney would be obligated to follow the direction of the lead agency.

If lead agencies contracted with private attorneys for CWLS, this problem would still exist. In this alternative, attorneys representing the state in dependency proceedings would be compensated by a third party, the lead agency, raising issues with the client-lawyer relationship, the lawyer's independence of professional judgment, and the confidentiality of client information.⁷ Placing responsibility for providing and supervising CWLS with a non-lawyer entity such as lead agencies also raises potential issues of the unlicensed practice of law.⁸

Other possible relationships between lead agencies and attorneys representing the state, such as forming law firm subsidiaries, are also prohibited by the Florida Bar Rules of Professional Conduct. For example, lawyers may not enter a partnership with a non-lawyer if the partnership consists of the practice of law, especially if the non-lawyer can direct or control the professional judgment of the attorney.⁹

In all other states, a government entity is responsible for providing CWLS, including

⁶ Rule 4-1.13 Organization as Client, Florida Bar Rules of Professional Conduct.

⁷ Rule 4-1.8 Conflict of Interest, Florida Bar Rules of Professional Conduct.

⁸ Rule 4-5.5 Unlicensed Practice of Law, Florida Bar Rules of Professional Conduct.

⁹ Rule 4-5.4 Professional Independence of a Lawyer, Florida Bar Rules of Professional Conduct.

⁵ Section 27.51, F.S.

those states that have privatized most of their child welfare services. For example, in Kansas, which has privatized all child welfare services, a county or district attorney represents the state in dependency hearings. (For information on how other states have structured the provision of child welfare legal services, please see Appendix B.)

Legal experts and other stakeholders we contacted asserted that CWLS should remain a government function because of the state's obligation to protect children and look out for their best interests. This obligation is based on the legal principle of *parens patriae*.¹⁰ Florida Statutes reflect the *parens patriae* principle by placing responsibility for protecting children with the state through its agent DCF. The state cannot delegate its duty to protect children to a non-governmental party. It is the state's responsibility to protect children that are represented in dependency hearings and, as such, the state is the client of CWLS attorneys. Because of the attorney-client relationship, the state must maintain direct authority for its legal services.

Further, lead agencies have different administrative structures and service delivery models reflecting their unique community needs. While this is desirable for service delivery, it could create a lack of uniformity in providing legal services throughout the state that would not be desirable. Uniformity in legal services is a requirement for federal funding and to achieve federal and state case processing time requirements.

Finally, there is no consensus among the lead agencies regarding whether they would want to assume responsibility for providing CWLS. While many executive directors of lead agencies indicated that they would support providing the CWLS function, others do not want or have reservations about assuming this function, citing concerns about the importance of independent, objective legal advice

provided by attorneys who are not employed by the lead agencies, the adequacy of available funding, the ability to recruit and retain qualified staff, potential conflicts of interest, and ethical issues for attorneys.

Contracting with private, for-profit law firms is feasible, but there are unknowns

In this option, the department would contract with private, for-profit law firms for CWLS services. This option is feasible and could provide advantages. Contracting would be consistent with the Legislature's goal of providing services through the community. In addition, contracting for the service would reduce the number of state employees authorized for this function, currently 597.5 FTE positions. Another state agency, the Department of Revenue, utilizes this model and currently contracts with private law firms for its child support enforcement program.

However, this option carries uncertainties, and it would require careful implementation. It is unknown whether there would be a sufficient number of attorneys or law firms willing and capable to perform this highly specialized work. It is also unclear whether private contractors would perform the function at a comparable cost; the average DCF cost per case for Fiscal Year 2002-03 was \$811 to handle all aspects of dependency proceedings (shelter, arraignment, adjudication, disposition, judicial reviews, termination of parental rights, and appeals). In contrast, private counsel appointed to represent parents only in termination of parental rights proceedings can be compensated \$1,000 at the trial level and \$2,500 at the appellate level.¹¹

Substantial planning would be essential before executing CWLS contracts. The department would need to determine the cost of cases and their discrete functions in order to ensure that it receives comparable and competitive cost quotes. The department also would need to analyze caseloads to determine how many providers would be needed by geographic area

¹⁰ The state must care for those who cannot take care of themselves, such as minors who lack proper care and custody from their parents.

¹¹ Chapter 2003-402, *Laws of Florida*.

and determine the extent of interest from providers.

To implement this option, the department would need to establish performance-based contracts. The contracts should clearly define terms, technical specifications, performance standards, training and programmatic requirements, and quality assurance systems. Specifically, the contract should require that attorneys

- provide training for local caseworkers,
- be available to meet with caseworkers at the agency office for a certain number of hours per week,
- attend case planning conferences for each case,
- attend training conferences on child welfare law, and
- be available outside working hours to provide legal services during emergencies.

In addition, the department would need to establish an accountability structure to adequately manage the contracts. Staff would need training in contracting for legal services. The department also would need to establish an information system to track cases. This would allow DCF to monitor performance and help the providers ensure that they meet time requirements. Currently, there is no statewide information system in place to do these functions.

If the Legislature wishes to pursue this option, we recommend that it first be implemented as a pilot project. DCF also should be directed to work with the Department of Revenue to identify best practices they have developed for contracting with its child support firms.

Making improvements to the current CWLS model is also an option

In this option, the department would continue to rely largely on in-house attorneys, although it also could contract with the state attorney and Attorney General for child welfare legal services. This option is feasible and has several advantages. However, if the function is

retained within DCF, the department should take several steps to improve the function.

Performance data and interviews with key stakeholders indicate that the current model of delivery of CWLS services works fairly well. As shown in Exhibit 4, CWLS attorneys handled cases in a timely manner in Fiscal Year 2002-03. For example, a key federal measure is establishing permanency goals for children removed from their homes. CWLS attorneys ensured that permanency hearings were held within the required 12 months from removal 94% of the time.

Exhibit 4 CWLS Attorneys Performed Fairly Well on Important Timeliness Measures

Performance Measures Fiscal Year 2002-03	
Measure ¹	Total ²
Number of cases with visitation plan/total number of shelter hearings	90.94% (16,475/18,116)
Number of judicial reviews heard timely/ total number of judicial reviews heard	93.27% (57,662/61,825)
Number of JRSSRs filed timely /total number of JRSSRs filed ³	80.78% (43,013/53,248)
Number of permanency hearings heard timely/total number of permanency hearings	93.61% (18,271/19,518)
Number of TPR petitions timely filed/total number of TPR petitions filed ⁴	65.56% (2,313/3,528)

¹ Some variations in measures wording.

² Data from DCF are estimates.

³ Filing of Judicial Review Social Studies Report (JRSSR) dependent on caseworker actions.

⁴ Termination of Parental Rights (TPR).

Source: OPPAGA analysis of data from the Department of Children and Families, State Attorney, and Attorney General.

In interviews, stakeholders were generally satisfied with the performance of CWLS attorneys. They reported that the quality of legal representation on behalf of the department and state was good; that attorneys were knowledgeable in the highly specialized field of dependency law; and most attorneys were accessible to caseworkers, responsive to their needs, open to their opinions, and respectful of caseworkers' professional judgment on cases.

Keeping the current model would have several advantages. First, the department already has the infrastructure to provide the function, and the costs are known. The department has experienced attorneys with institutional knowledge in the positions. Second, the department would maintain direct control over the function and the attorneys, which would provide clear lines of communication with legal staff and an increased ability to standardize practices. Third, having state employees work directly with contracted caseworkers as the department privatizes would help the department monitor the day-to-day activities of providers. This is important since the department retains custody and ultimate responsibility for dependent children.

However, there are also some disadvantages to this option. Retaining the function within DCF is not consistent with the department's goal of partnering with the private sector and local communities. Also, attorneys employed by DCF may not have the prestige that private or other agency attorneys have and this may contribute to low morale and turnover.

If the Legislature chooses to continue with the DCF model, the department should address three critical areas.

The department would need to improve staff retention. Statewide, 8% of CWLS attorney positions were vacant in July 2003, and attorney turnover ranged from 0% to over 75% in Fiscal Year 2002-03 among districts and the region, including contract providers. CWLS managers indicate that this high turnover is due in part from limited career paths, modest salaries, and high caseloads. CWLS attorneys have limited promotional opportunities; statewide there are 51 supervisory positions for 293 attorney positions. Salaries are also comparatively low. Beginning CWLS attorneys earn an average of \$37,921 per year, and experienced attorneys earn average salaries of \$51,130. In contrast, new law school graduates hired by Florida law firms in 2002 were offered average starting salaries that ranged from \$40,000 to over \$100,000.

Average caseloads for CWLS attorneys are high. In Fiscal Year 2002-03, caseloads for attorneys who handle cases from start to finish ranged from 73 to 220, while those attorneys who specialize in certain aspects of dependency cases, such as termination of parental rights, had caseloads ranging from 30 to 217. While there are no national standards for attorney caseloads, the American Bar Association has reported that 40-50 active child welfare cases constitute a reasonable caseload.¹²

The department would need to enhance attorney professional development. The department provides training for new CWLS attorneys, but it would need to be strengthened. The department currently provides three courses to new CWLS attorneys that are offered by the department's Professional Development Center, and requires these staff to attend training designed for investigators and caseworkers. This training is useful and consistent with recommendations of the American Bar Association. However, CWLS attorneys also could benefit from training enhancements such as providing a structured mentoring program for new attorneys where they are able to assist experienced CWLS attorneys with cases and trials. The department also could bring in experts to provide interdisciplinary training in such areas as substance abuse, domestic violence, and child development, as well as the opportunity to attend specialized seminars and training events related to child welfare legal services as well as training in general legal topics. Finally, the department could make Continuing Legal Education credits cost- and time-efficient by providing Florida Bar tapes and videos.

¹² Segal, E.C. *Evaluating and Improving Child Welfare agency Legal Representation: Self-Assessment Instrument and Commentary*. Washington, D.C.: ABA National Resource Center for Child Advocacy and Protection, 1990.

Accountability should be strengthened. The department currently does not have a statewide, automated case tracking system to help attorneys manage their caseloads and meet case processing time requirements. The department currently has several stand-alone systems in place, including manual systems, for this purpose. As a result, the reliability of performance data varies and some districts were only able to provide estimates. In contrast, the state attorney and Attorney General have sophisticated case tracking systems that allow managers and attorneys to track dependency cases in a variety of ways, e.g., by hearing type, hearing date, attorney, and performance measures. These systems are able to report accurate performance data. The DCF child welfare information system currently under development, HomeSafenet, will have a case management function for case workers. The developers of HomeSafenet should ensure that its case management specifications will address the needs of CWLS attorneys.

CWLS attorneys have an important role in achieving federal and state case processing time requirements and ensuring permanency for dependent children. While the department requires its legal services contractors to report performance data monthly, it is not routinely monitoring the performance of its in-house attorneys. DCF district and central office legal offices should routinely monitor in-house attorney timeliness and outcomes.

In addition, the department relies on quality assurance reviews of federal funding compliance and service delivery conducted by nonlawyers to identify problems with CWLS. Because of the important role CWLS attorneys have in the child welfare system, the department should implement a quality assurance program specifically for CWLS. This quality assurance program should use a peer review team of attorneys to conduct annual assessments. The quality assurance program should rely on reviews of legal and client files, observations of court hearings, interviews with attorneys about issues facing them, and

interviews with stakeholders about their satisfaction with the performance of CWLS to assess the quality of legal representation and the outcome of cases.

Regardless of the model used, several best practices should be adopted statewide

There are nationally recognized best practices for agency representation in dependency cases that have been found to improve the quality of legal representation and case outcomes. During our evaluation, we identified several best practices that were applicable to CWLS in Florida. If fully implemented, these best practices could further enhance the provision of CWLS regardless of whether public or private attorneys perform this function. We recommend that the department determine the feasibility of adopting these best practices statewide.

- The current practice for CWLS attorneys is for the same attorney to work a case from start to finish (continuity of representation).¹³ As the department privatizes child welfare services and different agencies provide investigations and services, and if the department expands its contracting for CWLS, it needs to ensure that continuity of representation is practiced. The ABA reports that changes of counsel can delay the case, disrupt case planning, and hamper the relationship between attorney and caseworker.
- The current practice in the department is to have CWLS attorneys collocated with investigators and caseworkers for accessibility and availability. However, the divestiture of the department's investigative and service functions may make it more difficult for attorneys to be collocated. A strong working relationship between attorneys and caseworkers is necessary to efficiently and effectively handle cases and communication between attorneys and caseworkers is a key component of this relationship. Attorneys,

¹³ Hardin, M. *Representing Clients, Vol. 1*, ABA Center on Children and the Law, Washington, D.C., 1999.

whether public or private, should maintain regular office hours at the social service agency to be available to talk with caseworkers about specific cases.¹⁴

- Currently, there is no interdisciplinary training of attorneys, investigators, or caseworkers on their respective roles and responsibilities. Interdisciplinary training of attorneys and caseworkers can strengthen their working relationship. The working relationship between attorneys and caseworkers is enhanced when roles and responsibilities are clear. This begins with caseworkers understanding that they are not the clients of attorneys and that the attorneys must represent the interests of the state. Both parties should understand that attorneys have responsibility for legal decisions, such as legal sufficiency and legal strategy, and caseworkers have responsibility for issues involving social work or treatment.¹⁵
- The department does not have practice standards for CWLS attorneys, and should develop or adopt such standards.¹⁶ These standards would be especially useful for contracts for legal services because they detail the department's expectations for attorneys. Practice standards raise the quality of legal representation by defining quality representation and giving attorneys goals to strive toward. Standards also ensure the uniformity of practice necessary to meet federal and state case processing time requirements. Practice standards can form the foundation for the legal quality assurance recommended previously.

- Caseloads for CWLS attorneys vary greatly across the state, and there does not appear to be a relationship between the number of attorneys in a district and the number of dependency cases. The department should develop caseload standards for attorneys. Research shows that high caseloads for attorneys affect the quality of representation, lead to burnout and turnover among lawyers, and runs the risk of professional conduct violations. Caseload standards would allow the department to reallocate attorney positions across the state based upon the number of dependency cases in each department district. Additionally, it may be difficult to contract with private attorneys if caseloads are uncertain or vary greatly across the state. Based on state assessments, the ABA recommends measuring caseloads by the number of new cases per attorney per year, with each child representing a separate case. Measuring open cases exaggerates the workloads of attorneys who may have non-active but open cases.

The Legislature should clarify who is CWLS client

The Florida Statutes should be specific about whose interests are represented by attorneys in dependency proceedings. The original language in Ch. 39, *Florida Statutes*, stated that an attorney for the department shall represent the state; however, this language is no longer included. We found that many conflicts between caseworkers and their managers and attorneys stem from misunderstandings of who the attorney represents. For example, if investigators, caseworkers, and managers believe that the attorneys represent them, rather than the state, they feel the attorneys should act on their wishes regarding cases regardless of whether statutory or case law support these actions.

¹⁴ Laver, M. *Foundations for Success: Strengthening Your Agency Attorney Office*, ABA Center on Children and the Law, Washington, D.C., 1999.

¹⁵ Ibid.

¹⁶ The ABA has draft standards developed.

Conclusion and Recommendations ———

We examined the feasibility of four models for providing child welfare legal services. We found that transferring responsibility to another government agency or contracting with not-for-profit entities are not feasible options. We concluded that there are two feasible options—contracting with private, for-profit law firms or retaining the current model. (For advantages and disadvantages of each of these options, please see Appendix C.)

Contracting with private law firms is feasible but the cost impact and availability of providers is uncertain. If the Legislature wishes to pursue this option, we recommend that it initially be implemented as a pilot project and the department work with the Department of Revenue to identify best practices it has developed for contracting with private law firms for child support legal services.

It is also feasible for DCF to continue to use in-house staff for child welfare legal services. If this option is selected, the department should take steps to improve attorney retention, training, and accountability systems.

Regardless of what option is used to provide child welfare legal services, we recommend that the department adopt best practices to improve the CWLS system in the areas of continuity of representation, accessibility to caseworkers, interdisciplinary training, practice standards, and caseload standards.

Finally, we recommend that the Legislature clarify Ch. 39, *Florida Statutes*, to specify whose interests are represented by child welfare attorneys in dependency proceedings. This could be done by re-enacting language that was formerly in this chapter that an attorney for the department shall represent the state.

Agency Response ———

In accordance with the provisions of s. 11.51, *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Children and Families and the Office of the State Attorney, Sixth Judicial Circuit, for each to review and respond. Their written responses have been reproduced herein and begin on pages 16 and 20, respectively.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability, and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

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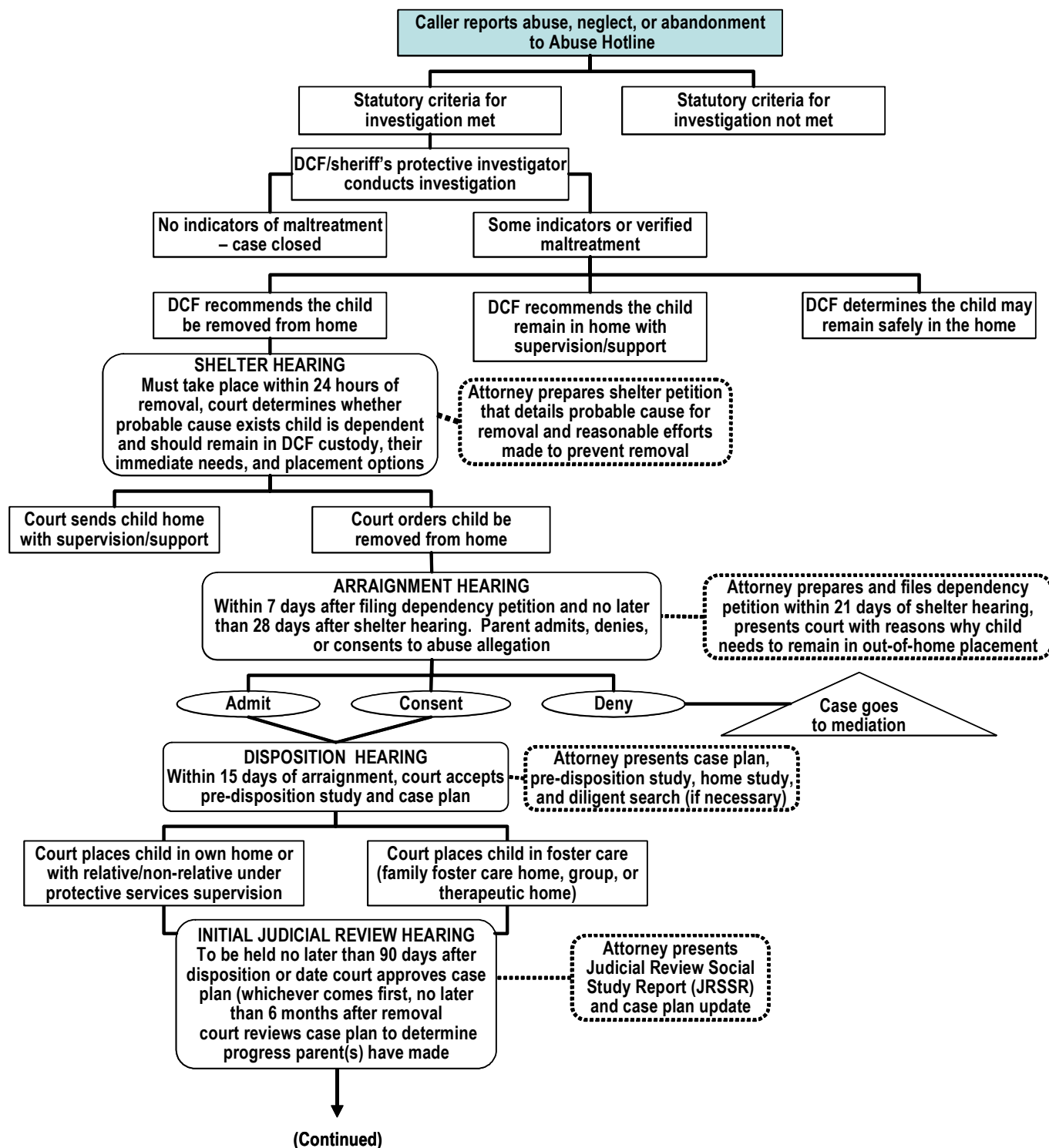
Project supervised by Frank Alvarez (850/487-9274)

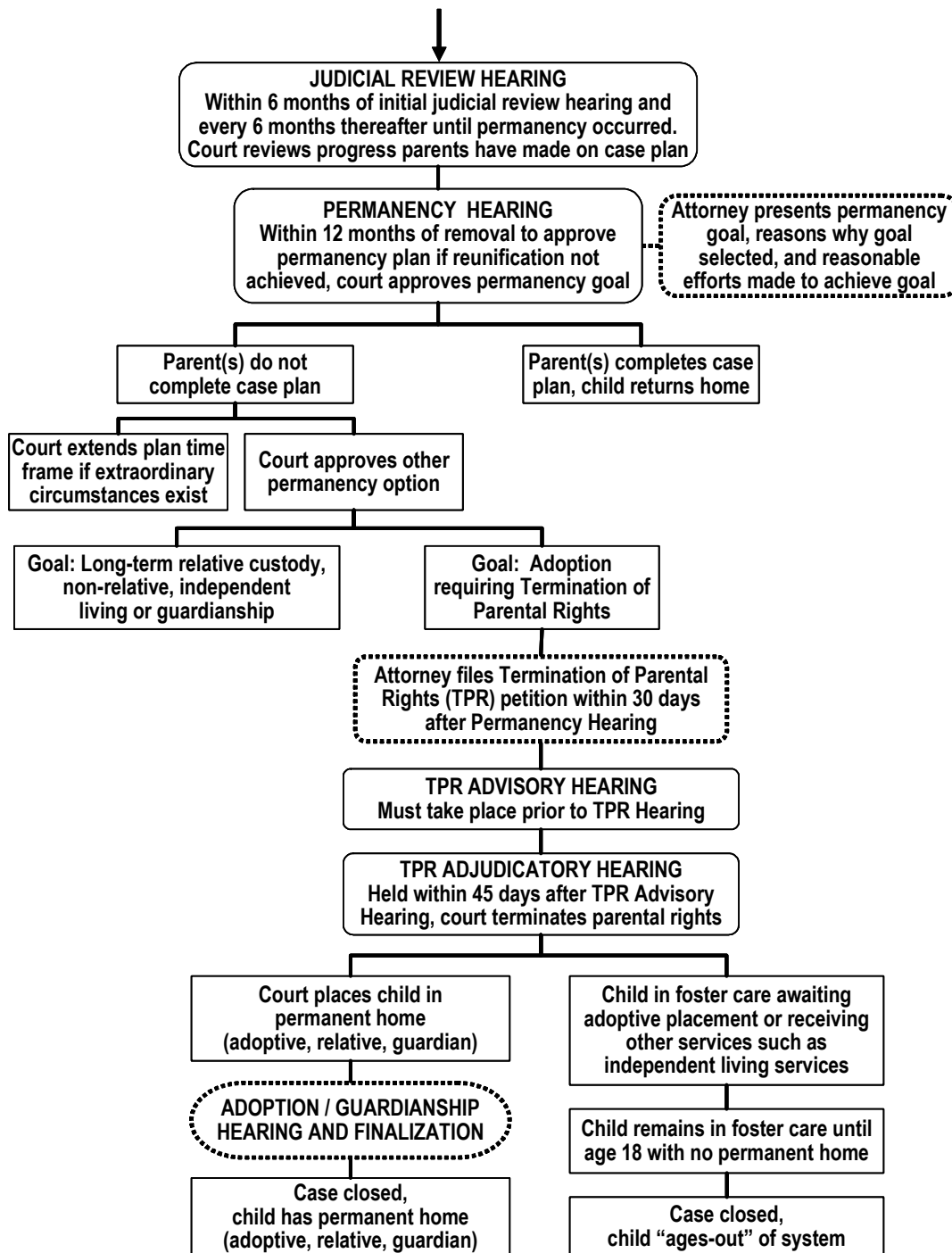
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Gary R. VanLandingham, OPPAGA Interim Director

Appendix A

Flowchart of Dependency Process





Source: OPPAGA analysis.

Appendix B

A Government Entity Is Responsible for Child Welfare Legal Services in All States

In all states, a government entity is responsible for providing child welfare legal services. However, states use varying services provision models. These include provision of child welfare legal services by locally elected prosecutors; the legal branch of state government (such as the Attorney General); attorneys who are employed by the social services agency; private attorneys or firms working on contract for a government agency; and a combination of these models. The American Bar Association has found through its assessment of states that the most effective form of legal representation for states in dependency proceedings is a unit of attorneys who are employed by the state social service agency, who represent it in court, and who help formulate its policy.

Table 1
Other States Use Various, Government-Based Models for the Provision of Child Welfare Legal Services

State	Locally Elected Prosecutor	Legal Branch of Government	Attorneys Employed by Social Services Agency	Private Attorneys or Firms Contracted by Government Agency	Combination
Alabama		+		+	√
Alaska		•			
Arizona		•			
Arkansas			•		
California	+			+	√
Colorado	•				
Connecticut		+	+		√
Delaware		•			
Florida	+	+	+		√
Georgia				•	
Hawaii		•			
Idaho	•				
Illinois	+		+		√
Indiana				•	
Iowa	•				
Kansas	•				
Kentucky	•				
Louisiana	+		+	+	√
Maine		•			
Maryland	+		+	+	√
Massachusetts			•		
Michigan	+	+		+	√
Minnesota	+			+	√
Mississippi	•				
Missouri			•		

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State	Locally Elected Prosecutor	Legal Branch of Government	Attorneys Employed by Social Services Agency	Private Attorneys or Firms Contracted by Government Agency	Combination
Montana	•				
Nebraska	+		+		✓
Nevada	•				
New Hampshire			•		
New Jersey		•			
New Mexico			•		
New York	+		+		✓
North Carolina	+		+	+	✓
North Dakota	•				
Ohio	+		+	+	✓
Oklahoma	•				
Oregon	•				
Pennsylvania	+			+	✓
Rhode Island			•		
South Carolina			+	+	✓
South Dakota	•				
Tennessee			•		
Texas	+		+		✓
Utah		•			
Vermont	+		+		✓
Virginia	+		+	+	✓
Washington	+	+			✓
West Virginia	•				
Wisconsin	•				
Wyoming	•				
TOTAL	15	7	7	2	19

+ Denotes government agency providing CWLS.

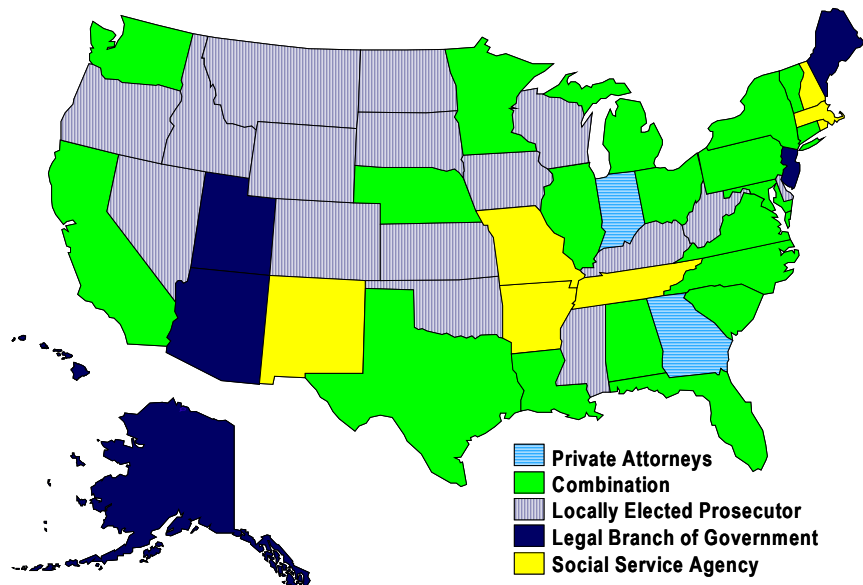
• Denotes only government agency providing CWLS.

✓ Denotes combination of government agencies providing CWLS.

Note: The table reflects the entities which represent the state or social service agency in dependency cases.

It does not reflect special case scenarios, such as conflict cases or if another agency is called in to help on rare occasions.

Source: OPPAGA analysis.



Appendix C

There Are Advantages and Disadvantages to Each Option for Providing Child Welfare Legal Services

Option	Advantages	Disadvantages
Option 1 Contract with Private Law Firms	<ul style="list-style-type: none"> Consistent with the Legislature's goal of providing services through the community. Reduces number of state employees for this function - currently authorized for 597.5 FTE positions. 	<ul style="list-style-type: none"> Unknown whether there would be a sufficient number of attorneys or law firms willing and capable to perform the function. The cost impact of this option is unclear. Careful planning would be essential before executing contracts to determine the cost of cases and their discrete functions in order to ensure that it receives comparable and competitive cost quotes. An accountability system to manage contracts and track performance would need to be established.
Option 2 DCF Retains Attorneys	<ul style="list-style-type: none"> Performance data and interviews with key stakeholders indicate DCF delivery of CWLS services works fairly well. Department already has the infrastructure to provide the function, and the costs are known. Department would maintain direct control over the function and the attorneys. Would allow state employees to work directly with contracted caseworkers as the department privatizes. 	<ul style="list-style-type: none"> Not consistent with the department's goal of partnering with the private sector and local communities. Attorneys employed by DCF may not have the prestige that private or other agency attorneys have and this may contribute to low morale and turnover. Improvements needed in areas of attracting and retaining qualified attorneys, professional development, and accountability.
Option		
Option 3 Transfer CWLS to another government agency	<ul style="list-style-type: none"> Not feasible <p><u>State Attorney and Attorney General</u> - Reluctance to expand function; report it is outside core mission</p> <p><u>Public Defender</u> - Conflict of interest</p>	
Option 4 Contract with not-for-profit entities	<ul style="list-style-type: none"> Not feasible <p><u>Legal Services</u> – Conflict of interest</p> <p><u>Lead Agencies</u> - Florida Bar Rules of Professional Conduct for attorneys preclude this option</p>	

Source: OPPAGA.

Jeb Bush
Governor



Jerry Regier
Secretary

Florida Department of Children and Families
Office of the Secretary

January 23, 2004

Mr. Gary R. VanLandingham
Interim Director
The Florida Legislature
Office of Program Policy Analysis and
Government Accountability
111 West Madison Street
Room 312, Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. VanLandingham:

Thank you for your recent letter providing the preliminary findings and recommendations of your Special Review on Child Welfare Legal Services Should be Provided by DCF or Private Law Firms.

Enclosed is our response to the findings and recommendations. If your staff has any additional questions, please have them call, Ms. Josie Tamayo, General Counsel, or Ms. Peggy Sanford, Assistant General Counsel, at (850) 488-2381.

If I may be of further assistance, please let me know.

Sincerely,

/s/
Jerry Regier
Secretary

Enclosure

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

**RESPONSE TO OFFICE OF PROGRAM POLICY ANALYSIS AND
GOVERNMENT ACCOUNTABILITY'S PROGRESS REPORT ON
CHILD WELFARE LEGAL SERVICES SHOULD BE PROVIDED BY DCR OR
PRIVATE LAW FIRMS**

Conclusion and Recommendation 1:

Contracting with private law firms is feasible but the cost impact and availability of providers is uncertain. If the Legislature wishes to pursue this option, we recommend that it initially be implemented as a pilot project and the Department work with the Department of Revenue to identify best practices it has developed for contracting with private law firms for child support legal services.

Department Response:

The Department agrees that the uncertainty of the cost impact and availability of providers requires that this option, if chosen by the Legislature, should be implemented cautiously through the use of a pilot. The Department further agrees that the experience of the Department of Revenue in contracting with private law firms for child support legal services would be valuable in developing and evaluating such a pilot.

Conclusion and Recommendation 2:

It is also feasible for DCF to continue to use in-house staff for child welfare legal services. If this option is selected, the Department should take steps to improve its attorney retention, training, and accountability systems.

Department Response:

The Department agrees that maintaining in-house staff for child welfare legal services is a feasible option. In fact, as noted in Appendix B of the report, the American Bar Association (ABA) found through its assessment of states that the most effective form of legal representation for states in dependency proceedings is a unit of attorneys who are employed by the state social service agency, who represent it in court, and who help formulate its policy.

The Department agrees, additionally, that improvements can be made in attorney retention, training, and accountability systems. In this context, the fact that Child Welfare Legal Services (CWLS) lawyers maintain caseloads far in excess of the 40-50 cases recommended by the ABA is of critical importance. Improvements in professional development, including

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

RESPONSE TO OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY'S PROGRESS REPORT ON CHILD WELFARE LEGAL SERVICES SHOULD BE PROVIDED BY DCR OR PRIVATE LAW FIRMS

additional access to Continuing Education Credits, interdisciplinary training, structured mentoring, and performance accountability, have already been undertaken but will continue to be limited by the reality of caseloads many times in excess of the recommended levels. [In November 2003, for example, using figures assuming all positions filled, the average caseload (per case, not per child) for a CWLS lawyer was 86.2 statewide. The range was from 59.4 to 151.1. The true average caseload, of course, is much higher, since the assumption that all positions are filled is never true.]

Conclusion and Recommendation 3:

Regardless of what option is used to provide child welfare legal services, we recommend that the Department adopt best practices to improve the CWLS system in the areas of continuity of representation, accessibility to caseworkers, Interdisciplinary training, practice standards, and caseload standards.

Department Response:

The Department agrees that improvements can be made in the areas of continuity of representation, accessibility to caseworkers, interdisciplinary training, practice standards, and caseload standards.

- In several districts, the continuity of representation model is in effect, and other districts are in various stages of implementing it.
- The issue of accessibility to caseworkers will continue to be of importance, particularly as the caseworkers move into Community-Based Care Agencies. The enhanced use of technology, combined with office hours¹ regularly scheduled staffings, and other efforts, must be emphasized in order to establish and maintain this critical communication. In this regard, the Department has recently provided training for legal staff in the use of HomeSafenet, and has entered into a partnership with the Office of the State Courts Administrator to develop and make available both form orders populated by HomeSafenet and a court case tracking capacity which has not previously existed. Current plans call for these improvements to be operational by the end of the current fiscal year.
- Interdisciplinary training has been implemented through requiring new attorneys to attend the pre-service training provided for all caseworkers. In addition, the interrelationship between CWLS

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attorneys and caseworkers must be a component of any new training design for the Department.

- While the Department has had practice standards for its attorneys for several years, the standards may not have the level of specificity and detail which may be suggested by the pending ABA draft standards.
- As soon as those standards are available, the Department will evaluate them and implement them as appropriate.
- The Department agrees with the ABA caseload standards of 40-50 active cases per lawyer, and adopts that standard as a goal.

Conclusion and Recommendation 4:

Finally, we recommend that the Legislature clarify Chapter 39, Florida Statutes, to specify whose interests are represented by child welfare attorneys in dependency proceedings. This could be done by re-enacting language that was formerly in this chapter that an attorney for the Department shall represent the state.

Department Response:

The Department agrees that the language formerly in Chapter 39 should be re-enacted into the statute.

Special Report



BERNIE McCABE
State Attorney

**OFFICE OF THE STATE ATTORNEY
SIXTH JUDICIAL CIRCUIT OF FLORIDA
PASCO AND PINELLAS COUNTIES**

January 12, 2004

Mr. Gary R. VanLandingham, Interim Director
Office of Program Policy Analysis and Government Accountability
Claude Pepper Building, Suite 312
111 West Madison Street
Tallahassee, FL 32399-1475

Dear Mr. VanLandingham:

We received your preliminary report on Child Welfare Legal Services and reviewed it with great interest.

First, I would like to take this opportunity to reaffirm my commitment to delivering efficient, effective, high quality child welfare legal services to Pinellas and Pasco counties. We believe that your analysts who conducted a site survey here can confirm that my staff is similarly committed.

Your report outlines a number of specific performance objectives which should be addressed by any provider of child welfare legal services. These include improved staff retention, enhanced professional development, strengthened accountability and adherence to "best practices" such as continuity of representation. Our program is excelling in each of these areas. In addition, as your report accurately reflects, we (and the Attorney General) have developed the most sophisticated CWLS case tracking systems in the state, enabling us to report accurate performance data.

For these reasons we recommend that legislation be enacted allowing OPPAGA to continue to monitor our progress and compare it to all other modes of child welfare legal service delivery. This will ultimately improve this most important activity statewide.

We appreciate the opportunity to respond to your preliminary report and we appreciated the professionalism of your analysts who visited our program and prepared this report. We look forward to working with OPPAGA in the future.

Sincerely yours,

/s/

Bernie McCabe
State Attorney

BMC/DKN/ljr