



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



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RESEARCH MEMORANDUM

Children's Legal Services Has Made Changes to Address Recommendations for Improvement; Some Challenges Remain

December 17, 2009

Summary

As requested, OPPAGA reviewed the implementation and performance of the Department of Children and Families' Children's Legal Services (CLS). The department has restructured CLS and has addressed most of the recommendations made by an internal workgroup and previous external reviews. These improvements include implementing a legal quality assurance program, enhancing attorneys' training and professional development opportunities, providing additional legal resources and tools, and strengthening attorney recruitment and retention efforts. However, CLS still faces several challenges, including strained relationships with stakeholders, limited control over funding for legal costs, insufficient pre-service training for new attorneys, and setbacks in developing its case tracking system.

Purpose, Organization, and Responsibilities

Chapter 39, *Florida Statutes*, makes the Department of Children and Families responsible for protecting children in the dependency system. A 1989 Florida Supreme Court opinion required adequate legal representation on behalf of the Department of Health and Rehabilitative Services (now the Department of Children and Families) at every stage of juvenile dependency proceedings conducted under Ch. 39, *Florida Statutes*.¹ To comply with this requirement, the 1992 Legislature required that an attorney for the department must represent the state in dependency proceedings.² The 1997 Legislature modified this requirement to specify that an attorney must represent the department during dependency and termination of parental rights proceedings.³

CLS attorneys

¹ The Florida Bar Re: Advisory Opinion HRS Nonlawyer Counselor, 547 So. 2d 909, 1989. Prior to this opinion, state attorneys represented the state in contested dependency cases. In non-contested cases, case workers prepared petitions, filed motions, appeared in court, and presented evidence without assistance from the state attorney. The Department of Legal Affairs represented the state in cases under appeal.

² Chapter 92-170, *Laws of Florida*.

³ Chapter 97-238, *Laws of Florida*, amended Ch. 39, *Florida Statutes*, and transferred sections related to delinquency and children and families in need of services to Chs. 984 and 985, *F.S.*, respectively.

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- advise protective investigators, caseworkers, and administrators on legal sufficiency for shelter, dependency, and termination of parental rights petitions and other issues;
- supervise or prepare and sign all legal documents including petitions, pleadings, motions, discovery requests, case plans, affidavits of diligent search, affidavits under the Uniform Child Custody Jurisdiction Act, pre-dispositional reports, judicial review social studies, certificates of service, and notices of appeal;
- provide legal expertise to caseworkers in case staffings and conferences;
- attend court hearings;
- participate in dependency mediation;
- represent the department in contested adoptions and the state in appellate proceedings; and
- train protective investigators and caseworkers regarding their legal responsibilities.

The department uses in-house attorneys to perform these functions in most counties and judicial circuits. However, it contracts with the state attorney for Pinellas and Pasco counties to provide these services in the 6th Judicial Circuit and with the Office of the Attorney General to provide these services in Hillsborough, Manatee, and Broward counties (Judicial Circuits 12, 13, and 17).

For Fiscal Year 2009-10, the Legislature appropriated \$43.7 million and 425 full-time equivalent (FTE) positions for Children's Legal Services.⁴ Approximately 60% of these FTEs are attorney positions, including management positions, while the remaining positions are paralegals and administrative support staff.

The department restructured Children's Legal Services as part of its reorganization effort. The 2007 Legislature authorized the department to modify its organizational structure.⁵ As part of this effort, the Secretary formed several workgroups of internal and external stakeholders to examine the department's structure. The Legal Review Workgroup was charged with reviewing the department's Office of the General Counsel and the former Child Welfare Legal Services functions.

This workgroup reviewed previous OPPAGA and Florida Bar reports that cited problems with the department's legal services and gathered information from stakeholders.⁶ The workgroup made recommendations to reorganize the department's legal services with a new management structure; improve the quality of legal representation; and enhance communication, coordination, and collaboration both within the department and with community partners. These recommendations also addressed the need for attorney training and professional development, caseload standards, adequate support staff levels, recruitment and retention practices, case tracking, and quality assurance.

⁴ The appropriation includes funding for the State Attorney's Office and the Office of the Attorney General; FTEs represent only DCF employees.

⁵ Chapter 2007-174, *Laws of Florida*.

⁶ *Child Welfare Legal Services Should be Provided by DCF or Private Law Firms*, OPPAGA [Report No. 04-05](#), January 2004; *Child Welfare Legal Services Makes Some Improvements, But Other Changes Needed*, OPPAGA [Report No. 05-47](#), September 2005; *Report of the Florida Bar's Law Office Management Assistance Service to the Office of the General Counsel State of Florida Department of Children and Families*, The Florida Bar, July 2004.

To respond to these recommendations, the department created a new management structure for Child Welfare Legal Services in 2007. The function was made an autonomous unit reporting to a state director, separate from the department's general counsel and regional legal counsels. The director of Children's Legal Services reports to the department secretary and there are five regional directors and five functional area directors who oversee training, appeals, quality assurance, administration; and special topics. The geographical areas supervised by the Children's Legal Services' regional directors align with the department's regional structure except in South Florida where one director supervises both the department's southeast and southern regions. The department continues to use managing and supervising attorneys to oversee circuit operations.

Children's Legal Services has addressed most recommendations

To address the recommendations made by the Legal Review Workgroup, CLS has implemented a quality assurance program, enhanced training and professional development opportunities, provided more legal resources and tools, and strengthened staff recruitment and retention efforts. Although opinions about the success of these efforts are mixed, CLS staff and some stakeholders report that these steps have improved the quality of legal services provided by attorneys.

CLS has established a quality assurance program. As recommended by both prior OPPAGA reports and the Legal Review Workgroup, the department has established a quality assurance system for CLS. The initial quality assurance reports, issued in July 2008, focused on the quality of petitions filed with the court to request removal of children from their homes and compared department regions and circuits by the rate at which investigators removed children. In March 2009, this process was refined to focus on 10 key measures. According to department staff, this change was based in part on the findings of a federal Child and Family Services Review of Florida's child welfare system, including whether children and caregivers are present in court, whether children's educational needs are met, and whether children are prepared for independent living once they leave foster care. CLS administrators indicate that they use quality assurance findings and reports to identify areas needing improvement.

The department is planning to further enhance its quality assurance efforts by integrating CLS reviews with those of the Family Safety Program, and it recently conducted a pilot to test this model. CLS managing and supervising attorneys will spend two days each quarter reviewing cases to assess the quality of legal decisions, while Family Safety quality assurance staff will review these cases for the quality of protective investigations and case management.

CLS has enhanced training and professional development opportunities. As recommended by the workgroup and prior OPPAGA reports, the department has enhanced its training and professional development programs. These have included

- providing training on litigation skills to improve attorney's trial skills;
- providing training on updates to Ch. 39, *Florida Statutes*;
- issuing a trial advocacy guide to help attorneys and their supervisors prepare for trial;
- establishing a process whereby new attorneys ride along with protective investigators and case workers to help attorneys better understand the different roles and responsibilities in the dependency system;

- creating a structured mentoring system for new attorneys that includes shadowing senior attorneys, observing trials, assisting senior attorneys with trials and conducting trials themselves under the observation of supervising and managing attorneys; and
- establishing processes to ensure that all training for CLS attorneys qualifies for Continuing Legal Education credits.

CLS also provided training in legal requirements for children's Master Trust Accounts and independent living, and provides ongoing technical assistance to its attorneys on a range of issues including foster children's educational needs, special needs trusts, and Medicaid eligibility. The CLS appellate director additionally provides case law updates through monthly conference calls and posts appellate decisions on the program's website.

CLS has provided legal resources and tools to its attorneys. To address weaknesses in legal resources identified by the workgroup and the Florida Bar's 2004 report, the department has provided laptop computers to its attorneys and has upgraded their printers and scanners. CLS also provided Blackberries, cell phones, and access to Internet legal research tools such as Westlaw and Lexis-Nexis to many of its attorneys, and it intends to provide these tools to the remaining attorneys as funding permits. CLS also developed a password-protected website for CLS staff through the University of South Florida's Center for the Advancement of Child Welfare Practice. This website contains announcements of upcoming training, information on legal issues, and general announcements.

CLS has strengthened recruitment and retention efforts. As recommended by the workgroup, The Florida Bar, and OPPAGA, CLS has strengthened its efforts to recruit and retain attorneys. Specifically, CLS administrators have made presentations to Florida law school students on practicing dependency law. It has also provided paid internships to students who participate in The Florida Bar's certified legal intern program; these interns spend a semester working with a CLS attorney to help them understand dependency law and the department's work. CLS administrators report that they have recruited several attorneys through this program.

CLS has also taken steps to reduce attorney turnover. Our 2004 report noted that turnover exceeded 75% in some districts and was due in part to limited career paths, modest salaries, and high caseloads. For example, our 2004 report noted that average salaries for beginning attorneys was \$38,000 compared to average starting salaries ranging from \$40,000 to over \$100,000 for new law school graduates hired by private law firms. However, managing attorneys report that they recently hired attorneys at around \$50,000 per year. In addition, caseloads have been reduced from a range of 73 to 220 active cases per attorney to a range of 60 to 80 cases. Managing attorneys also monitor cases to identify those that should be closed such as when children have been reunified with their parents and thus further judicial action is not required, and administrators periodically review caseloads across the state and realign staffing as needed to more evenly distribute workload across the state. These caseload management efforts have been aided by a reduction in the number of children entering the dependency system.⁷

⁷ Department administrators cite a combination of factors to explain why fewer children are entering the dependency system. These factors include efforts by protective investigators and community-based care lead agencies to safely divert some cases of reported maltreatment by using other resources to provide services and help families, and increased emphasis on child abuse prevention and intervention.

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These steps, together with the national economic recession, have helped to reduce staff turnover. For Fiscal Year 2008-09, the department reported average attorney turnover of 14.3%, ranging from 5% to 22% among regions.

Although opinions are mixed, CLS staff and some stakeholders report that these changes have improved the quality of legal services. To assess stakeholders' opinions about the quality of CLS legal services, we visited six circuits and interviewed or held focus groups with judges, guardians ad litem, attorneys ad litem, child protective investigators, case managers, and CLS staff (attorneys, supervisors, and managers).

CLS attorneys, supervisors, and managers reported a substantial improvement in the quality of the department's legal representation of dependent children since restructuring CLS. The improvements most often mentioned were that

- attorneys better understand that they represent the State of Florida, rather than case managers or child protective investigators, as was their previous understanding before CLS was restructured;
- attorneys have a more in-depth knowledge of cases and are able to better recognize when children may need non-dependency legal advocacy;
- attorneys control decisions about which cases to take to court and proceed only when cases are sound;
- attorneys guide decisions about when to remove children from their homes, which has supported the department's effort to reduce out-of-home care;
- attorneys understand that it is not their role to protect the department or hide poor casework, resulting in more transparency and openness in court;
- attorneys feel more supported by management in the legal decisions they make; and
- attorneys believe that judges show them more respect in court, have more confidence in their work, and are more likely to rely on their judgments when in court.

Judges, guardians ad litem, and attorneys ad litem were not uniformly positive about the changes at CLS, although many reported improvements since its restructuring. Attorneys ad litem indicated that CLS has a more unified perspective about its legal role in the dependency system, and indicated that CLS attorneys are more knowledgeable, better prepared, and more confident in the courtroom. Some judges reported that the CLS attorneys are willing to advocate with community-based care lead agencies to provide needed services to children. However, some of these stakeholders reported that CLS attorneys were not attending case staffings, did not appear to have adequate knowledge of cases, and did not have enough experience practicing dependency law.

Case managers and child protective investigators were generally the most concerned about the changes in CLS, but reported some improvements. Some case managers noted that the attorneys have begun contacting them farther in advance of court hearings to enable them to more adequately prepare testimony. Others noted that they have a more collaborative relationship with the attorneys and receive guidance on additional work needed to strengthen cases. Protective investigators reported that CLS attorneys are more pro-active in determining legal sufficiency to proceed in a case while still taking the investigator's viewpoint into account, and indicated that

CLS has a higher level of accountability than in the past and the attorneys seem to be more knowledgeable and caring. However, as discussed below, other protective investigators and case managers were concerned about their relationships with CLS attorneys and the quality of legal representation.

Children's Legal Services faces some ongoing challenges

Despite changes to improve its operations and performance, CLS still faces challenges due to strained relationships with some stakeholders, lack of control over funding for legal costs, insufficient pre-service training for new attorneys, and setbacks in support and maintenance of its case tracking system.

CLS needs to rebuild relationships with stakeholders. Both the workgroup and prior OPPAGA reports had concluded that the department needed to improve relationships with key stakeholders and better delineate the roles and responsibilities of the various entities involved in dependency proceedings. To address these issues, department and CLS administrators announced through written and oral communication that CLS attorneys represent the State of Florida, acting through the department, rather than the department or its contracted providers.

However, some stakeholders reported that CLS staff conveyed this clarification in a manner that strained rather than improved relationships. Some protective investigators and case managers told us that CLS administrators and attorneys often clarified roles and responsibilities in an adversarial manner, and indicated that they were told that their case recommendations would no longer be represented by CLS attorneys and their role was that of a witness rather than a partner in dependency proceedings. As a result, these stakeholders said that their expertise and knowledge of families was ignored, that CLS attorneys presented cases without complete knowledge of all facts, and the attorneys sometimes disagreed openly with them in court about case decisions. Further, these stakeholders asserted that the roles of case managers and CLS were becoming blurred as attorneys assumed responsibilities such as establishing an appropriate permanency goal for a child.

To address this problem, CLS administrators are planning a series of team building workshops with lead agencies that will be facilitated by a consultant from the Casey Family Programs. CLS regional directors have also met with judges in their regions to discuss the new CLS structure and plan to have periodic meetings with these officials.

CLS does not control all funding for legal costs. Unlike other state legal entities such as state attorneys, public defenders, and court-appointed counsel, CLS does not receive a designated appropriation for legal costs. The Florida Bar's 2004 report noted that non-attorneys, rather than CLS managers, were projecting budgetary needs for the department's legal costs in dependency proceedings. To ensure there are adequate funds to cover the cost of litigation, the report recommended that managing attorneys be responsible for this function. The workgroup also recommended that CLS be given control and responsibility for all legal costs associated with dependency proceedings.

However, the department has not made this change, and there is inconsistency across circuits in which entity is responsible for paying for legal costs such as expert witnesses, service of process, and public notice of termination of parental rights proceedings. Generally, the department's

budget does not cover these costs and it must request payment for these expenses from the contracted lead agencies.⁸ Some lead agency directors question why their organizations are expected to pay for trial costs.

However, in Circuits 6, 12, 13, and 17, the department's contracted CLS providers (a state attorney and the Office of the Attorney General) receive funding in their contracts for all legal costs incurred while working on behalf of the department. These contractors indicated that billing lead agencies for legal costs would be problematic and not in keeping with their normal operations.

To ensure agreement on which entity is responsible for legal costs, CLS developed and negotiated amendments to lead agency contracts that delineate the specific legal costs lead agencies will pay in each circuit for Fiscal Year 2009-10. However, the department is not planning to modify lead agency funding amounts to shift responsibility for legal costs from lead agencies to CLS.

To bring about a greater degree of uniformity in these arrangements, the department should consider, in consultation with lead agency administrators, defining those legal costs that CLS should assume for all circuits. For example, the department could form a working group to identify legal costs most appropriate for the department to control, such as service of process or depositions, and legal costs that lead agencies should control, such as obtaining copies of children's birth certificates and parents' death certificates when applicable.

CLS needs to develop more structured pre-service training for new attorneys. The workgroup recommended that CLS establish a pre-service curriculum for new attorneys. Although CLS has enhanced training and professional development in several areas, its regional administrators and attorneys reported a continuing need to develop a structured orientation training curriculum that covers the dependency system, the roles and responsibilities of the entities in this system, and relevant statutory and case law. Attorneys noted inconsistencies in training provided in different department regions on substantive issues affecting the dependency system, such as domestic violence, substance abuse, and mental health. To address this problem, the department should consider reinstating the pre-service training curriculum for new attorneys that it offered prior to 2004; to minimize costs it should record a video of the training to post on the CLS website so it can be viewed by new attorneys at whatever point they are hired during the year.

CLS has encountered setbacks in support and maintenance of its case tracking system. Our prior report noted that the department lacked a statewide automatic tracking system to help attorneys manage their caseloads and meet case processing time requirements. Instead, the department had several stand-alone systems including manual systems.

Subsequent to our 2004 report, the department decided to adopt the Judicial Case Management Information System which was being developed and implemented by the Office of the State Court Administrator, and it provided funding to help develop this system. This system, now titled the Florida Dependency Court Information System, is still under development. Furthermore, as noted by a report from the Florida Bar's Legal Office Management Assistance

⁸ According to department administrators, funding for legal costs shifted from the department to lead agencies during the transition to community-based care, but they were not able to identify the point in time or the reasons why this occurred.

Service, the system was intended to support judges and judicial case managers rather than department attorneys, and confidentiality issues precluded department attorneys from using the system.

In 2005, the department adapted a case tracking and monitoring system developed and used by the Office of the Attorney General. However, the system has limitations in that it does not interface with the Florida Safe Families Network (the department's case management data system); instead, case managers must enter key legal event dates into the case management system for federal reporting purposes. As a result, the department is operating dual systems to capture legal information, and contracted CLS providers continue to operate their own case tracking systems.

In 2007, the department instead decided to develop a legal module within the Florida Safe Families Network, as was recommended by the workgroup. However, when the department released the legal module in August 2009, the system did not incorporate functions CLS needed such as case tracking, calendaring, and the ability to generate legal forms.

To address this problem, the department will continue to use its current CLS case tracking system for the foreseeable future and has contracted with a provider to support, maintain, and develop enhancements to the legal module. However, this solution does not address the limitations in the current system such as the lack of an interface with the Florida Safe Families Network.